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American Antiquarian Society

A Calendar of the Manuscripts of Col. John Bradstreet



American Antiquarian Society

A CALENDAR OF THE MANUSCRIPTS OF COL. JOHN BRADSTREET

IN THE
LIBRARY OF THE SOCIETY

PREPARED FROM THE ORIGINALS
UNDER DIRECTION OF THE LIBRARY COMMITTEE
BY CHARLES HENRY LINCOLN



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By Colonel John Bradstreet comanding all his Majestys Forces on the Western District &c. &c. &c.

Notice is hereby Given to all Indian Traders, that on a Representation of Sir William Johnsons Liberty is granted them to Trade with the distant Indian Nations now here and none other for all kind of Merchandize, except Arms and Amunition which they are strictly forbid to sell, give, or in anywise allow the Indians to get from them, on pain of being treated as Enemies to their King and Country.

The Merchandize hereby permitted to be bought and sold, to be at the hereafter named prices

And to avoid impositions on either side, an Officer with two Indian Traders will attend the Time allowd for the Trade abovementioned, which is to be from a 10 o Clock this morning and end on the 21st instant in the Morning

A Stroud Blanket 2 yards	2 Bevers	A Steel Beaver trap	1 large Bever	A pair of Silver Wrist Bands	2 middling Bevers
A large French Blanket	2 middling Do	Bottle of Rum Six Shillings		4 pair Silver Ear Bobs	1 Bever Case
A Second Size ditto	1 large Do	Gilt Trunk bin and Hoss Pistols	6 Skins each Sort	12 Silver Brooches	1 Bever
A small Ditto	1 middling Do	A Red gown Cloth with Gilt Lace for a gown Person 2 Bevers		2 large Silver Crosses	1 Do
A Roll of Garlering	1 ditto	A Small Ditto	1 Large Bever	A Silver Hair plate best Sort	3
A Mans Ruffled Shirt	1 large Do	4 Yds ribband	1 Cat	A size smaller	2
Ditto plain	1 middling Do	a good Sheep	1 Raccoon	A Silver Gorget	2 in a Case
A good Gimp	1 Ditto	A Gallon of Rum	1 Bever		

Given at Niagara July 19 1764

PREFATORY NOTE.

The publication of this calendar of the manuscripts of Col. John Bradstreet in the Library of this Society follows the precedent set by the issuance of a similar list in 1907 for the manuscripts of Sir William Johnson. It is a further step in the policy of describing some of the original autograph material for the study of American history which is here available.

Born in England in 1711, John Bradstreet spent the greater portion of his life in America. From 1745 when he participated in the Louisburg campaign he was active in maintaining British control in the colonies. His death in 1774 prevented the necessity of his taking sides in the struggle for American independence and left him to share with Sir William Johnson who died in the same year, the credit of a vigorous opposition to the interests of the French in America. If his judgment was not equal to his activity, his work well illustrated British policy in America during the period immediately preceding the outbreak of the American Revolution.

The collection here calendared comprises six volumes of Diaries, Orderly Books etc., and one volume of over 300 letters and other detached manuscripts. Each of the former volumes may be considered a collection in itself but their character is such as to preclude their division for listing purposes and each has been given but a single entry. In the exercise of a similar discretion the less important of the detached manuscripts have been combined when practicable and in other cases omitted, making a resultant calendar of but 206 entries. Although this method of treatment has necessitated the loss of many details the calendar remains a representative one in that it presents the essential features of the entire collection.

The manuscripts consist primarily of the accounts and military papers of Colonel Bradstreet when Quarter-Master

General at Albany, or when in command of the expeditions against Frontenac in 1758 and Detroit in 1764. They illustrate the difficulties attendant upon the gathering, sustaining and commanding Provincial troops at that time. Colonial jealousies are shown and many letters throw light upon the character of Bradstreet the man as well as the officer. As an appendix to the calendar there has been printed the argument, presented to the Lords of Trade and Plantation in 1771, upholding Bradstreet's claims to lands purchased from the Indians in 1769. This argument presented in substantially the same form to the Governor and Council of New York in 1770, and used again in England in 1773, states the ground upon which the Bradstreet grants of land in this State were, after a long contest, finally sustained. Occasional reference has been made to helpful manuscripts in the Sir William Johnson collection and this calendar is paged with and may be used in conjunction with the earlier issue.

NATHANIEL PAINE,
WALDO LINCOLN,
FRANKLIN P. RICE,
Library Committee.

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ABBREVIATIONS USED.

A. D.—Autograph Document.
A. D. S.—Autograph Document Signed.
D. S.—Document Signed.
A. L.—Autograph Letter.
A. L. S.—Autograph Letter Signed.
L. S.—Letter Signed.
[ ]—Information supplied.
[?]—Doubtful reading or information.
***—Omissions.

THE COL. JOHN BRADSTREET MANUSCRIPTS.

[1755.] June. [**Bradstreet,** John.] Oswego. Letter to [William] Shirley. Acknowledges two letters brought by carpenters and received Jun. 8; progress in boat building; rough character of the waters of the lake [Ontario]; need of more carpenters; French have passed on way to the Ohio country. Auto Draft. 2pp.

[1755.] [June.] [**Bradstreet,** John. Oswego.] Letter to [William Shirley]. Acknowledges letter of June 15; is building boats as directed "with such alterations" as improve them; news of Shirley's coming given out by new arrivals; conditions at Niagara; reenforcements expected; considers himself equal to any exigency as he understands conditions thoroughly. Auto. Draft. 2pp.

1755. Jul. 20. [**Bradstreet,** John.] Oswego. Letter to William Shirley. Acknowledges letter of Jul. 12; arrival of three companies from New Jersey; prevalence of the flux in camp; flight of the French to Niagara. Auto. Draft. 1p.

1755. [Jul.] 24. [**Bradstreet,** John.] Oswego. Letter to [William Shirley]. Arrival of Capt. [William] Douglass and party on 21st; no Indians come to camp; will strengthen fortifications until Shirley's arrival or until orders to contrary are received. Auto. Draft. 1p.

On verso of same to same Jul. 20, 1755.

1755. [Aug. 2.] **[Bradstreet,** John. Oswego.] Letter to [William] Shirley]. An account of the work done by the troops at Oswego from June 1, 1755, to August 2 following. Auto. draft. 1p.

1755. Nov. 28. **Shirley,** W[illiam.] Albany. Memorandum for [John] Bradstreet. Is to grant furloughs to men enlisting in Shirley's regt. if he judges best, sending remainder to Schenectady with so much of their bounty money as is advisable; no more men to be raised for new regiments and men at Lake George to be enlisted under Sir William Pepperrell or in Shirley's own regiment; directions as to building barracks and whale boats; is to settle accounts with Maj. [William] Hoar, to whom 500 dollars has been advanced for enlistments at Lake George. A. L. S. 2pp.

1756. Apr. 6. **[Bradstreet,** John.] Albany. Letter to [William] Shirley. Has received word from Capt. Laforay [George Le Hunte?] through Capt. [ ] Bradley that harbors on lake are "stopt"; need of immediate and energetic movements to forestall the French; over 200 whale boats and many batteaux gone and Bradstreet plans to leave in three days. Auto. Draft. 2 pp.

1756. [Jul. 1.] **Alexander,** William. [Albany.] To John Bradstreet. Account for monies received and paid on batteau account March–June, 1756; balance due Alexander is £1450, 6s. 6d. N. Y. currency. D. S. 5pp.

1756. Nov. 17. **Fairservice,** James. [Albany.] To [John Bradstreet]. Account against "His Majesty's Service" Mar. 4–Apr. 10, 1756. A. D. S. 2pp.

1757. Mar. 8. **Loudoun,** [John, Earl of.] New York. To John Bradstreet. Commission as Captain in "His

Majesty's Royal American Regiment." Countersigned J[ohn] Appy, and seal attached. D. S. 1p.

1757. Apr. 4. **Kirkwood,** James. Boston. To [John Bradstreet.] Account of sundries received on board snow *Diamond* by order of "Col" Bradstreet. A. D. S. 1p.

1757. Apr. 5. **Kirkwood,** James. Boston. To John Bradstreet. Receipt for stores and provisions delivered on board snow *Diamond.* D. S. 1p.

1757. Apr. 5. **Lothrop,** Benjamin, jr. Boston. To John Bradstreet. Receipt for stores and provisions delivered on board ship *Lyon.* D. S. 1p.

1757. Apr. 6. **Cartwright,** Thomas. Boston. To John Bradstreet. Receipt for stores and provisions delivered on board ship *Boston.* D. S. 1p.

Under this date are two receipts similar to the above signed by Bartholomew Killoran and Andrew Newell, each for his own vessel.

1757. Apr. 22. **Kirkwood,** James. New York. To [Commanding Officer at New York]. A Return of his Majesty's stores on board the snow *Diamond.* A. D. S. 1p.

See: Kirkwood to John Bradstreet; Apr. 4 and 5, 1757.

1757. Apr. 23. **Cartwright,** Thomas. New York. To [John Bradstreet]. A manifest of the cargo received on board transport *Boston* with an account of provisions for the ship's use. A. D. S. 1p.

1757. Apr. 23. **Hallowell,** Benjamin, jr. and five others. Boston. To [John Bradstreet]. Mensuration at Boston of following three transports with statement of their time of entrance into his Majesty's service: ship *Two Brothers,* William Wingfield, Master; ship *Sheffield,* J[ohn] Reed, Master; snow *St. Peter,* [Robert] Kennedy, Master. D. S. Ben-

jamin Hallowell, jr., Ralph Hartt, Alexander Hunt, Peter McTaggart, William Welsh, George Wilson. 1p.

1757. Apr. 23. **Reed,** John. Boston. To John Bradstreet. Receipt for stores delivered on board the ship *Sheffield.* D. S. 1p.

1757. Apr. 23. **Kennedy,** Robert. Boston. To John Bradstreet. Receipt for stores delivered on board the snow *St. Peter.* D. S. 1p. and duplicate.

1757. May 9. **Collins,** James. Boston. To John Bradstreet. Receipt for stores delivered on board the brigantine *Mermaid.* D. S. 1p.

Under this date are eight receipts similar to the above, signed respectively by Patrick Connell, William Davis, Neil Gillis, Patrick James, Zephaniah Pinkham, William Scott, Peter Sinclair, and Ab[raham] Somes, each for his own vessel.

1757. May 9. **Gwynn,** Anthony, Thomas Tannott, and Thomas Woodbridge. Newbury. To [John Bradstreet.] Have surveyed the following vessels with their equipment and certify the date of fitness of service; Snow *Charming Molly,* Joseph Wadleigh, Master, May 5; Brigantine *Antelope,* Jeremiah Stanniford, Master, May 8. D. S. and attested. 3pp.

1757. May 11. **Mugford,** James. Marblehead. To John Bradstreet. Receipt for stores delivered on board the ship *Hooper* for use of the Crown at New York. A. D. S. 1p.

1758. Mar. 13. **[Bradstreet,** John.] Albany. Letter to James Abercrombie. Arrival of carpenters from Col. Meservey [Nathaniel Meserve?] including many boys; will not be able to furnish 1200 boats by May 15; needs 100 more carpenters from New Jersey and Philadelphia. Auto. Draft. 2pp.

1758. Mar. 24. **[Bradstreet, John.]** Letter to James Abercrombie. Acknowledges letter of Mar. 18; 250 batteaux prepared to go with army to Crown Point; has raised 800 rangers for attack on Cadaraque but doubts if all will serve in another quarter; difficult to procure men for general service because of large bounty offered by colonies for provincial enlistments; bounty offered by [William] Shirley; asks Abercrombie's plans and states need for provisions at Albany. Auto. Draft. 3pp.

1758. Mar. 26. **Mortier,** A[braham.] New York. Letter to John Bradstreet. Has received from [Charles Ward] Apthorp an account of money advanced by order of [Maj. Genl. John Campbell, Earl] Loudoun or of Bradstreet, and from [Maj.] Genl. [James Abercrombie] a warrant for £3000 in payment of account; warrant will serve to repay amounts advanced Col. [Nathaniel] Meserve for carpenters and batteau service; directions as to future accounting of Bradstreet and others; congratulates him on recent advancement. A. L. S. 2pp.

1758. May 4-Nov. 30. **De Normandie,** Daniel. [Albany.] To John Bradstreet. Account of all monies received and paid for the batteau service by Daniel De Normandie under the direction of [Lt.] Col. John Bradstreet, Commander-in-Chief of all the batteau men. 1 vol.

The volume is in 127 pages and contains in addition to De Normandie's accounts, 165 signed receipts from men in batteau service for monies received.

1758. Sept. 25. **Comyn,** Pieter. Fort Stanwix. Letter to [John Bradstreet]. Expense incurred for wages and allowances to three officers and company of 71 men enlisted by order of Brig. Genl. [John] Stanwix. D. S. 1p.

1758. **Bradstreet,** John. Albany. Account for Pilots
Nov. 15. and Interpreters. Account of monies paid for pilots and Indian interpreters upon the expedition to Cardaraque, with receipts for same. In ms. of clerk except signatures. 1p. and duplicate.

1758. **Apthrop,** Charles Ward. Boston. Letter to John
Nov. 25. Bradstreet. Acknowledges letter of Nov. 12, enclosing [Abraham] Mortier's draft for 10,000 dollars; has credited Bradstreet's account with draft and paid Capt. [Joshua] Loring £200 New York currency as directed; will look into matter of payment of James Otis. L. S. 1p.

1758. [**Bradstreet,** John.] Albany. Letter to [Sir Jeffrey]
Dec. 31. Amherst. As desired sends state of batteaux; reasons for widely scattered location of boats. On verso is the statement showing number and location of available boats. Auto. Draft. 2pp.

1759. **Amherst,** Sir Jeffrey. New York. Letter to [John]
Feb. 4. Bradstreet. In reply to letter of Feb. 3 sends warrant for £3000; methods of recourse for the payment of this amount and low state of military chest at New York; Bradstreet to explain situation to [Thomas] Gage at once. L. S. 2pp.

1759. **Gage,** Thomas. Albany. Letter to [John] Brad-
Apr. 19. street. Directs Bradstreet to pay certain specified accounts amounting to £100, 16s. being the expenses for entertainment etc. for Indian scouting party sent out at Fort Edward. On verso are four receipts to Lt. George Coventry for various items of above accounts of date Apr. 21, May 28 and Jun. 24 (2) respectively. D. S. 2pp.

1759. [**Bradstreet,** John. Albany.] Account of men at
Apr. 24. Hospital in Albany. Account with His Majesty's

hospital at Albany for 14 batteau men who were in the hospital at various times between Feb. 25 and Apr. 24, 1759; total is £2.10d. In ms. of clerk. 1p.

1759. May 11. **Glen,** John. Schenectady. To Commissary Officers [and whom it may concern.] Orders that bearers of letter be not "stopt nor hindered on any acct. whatever" as they have provisions on batteaux; commissaries receiving or giving provisions to note same on letter. A. D. S. 1p.

1759. Sept. 2. [**Bradstreet,** John.] Schenectady. Letter to [Thomas Gage]. Acknowledges letter of Aug. 26; provisions accumulated; would have given Major [Gabriel] Christie charge of transportation had his orders from Maj. Genl. [Jeffrey] Amherst allowed him to do so; will report to latter and do as directed by him in the matter. Auto. Draft. 2pp.

1759. Sept. 21. [**Bradstreet,** John.] Albany. Letter to [Sir Jeffrey Amherst]. Regrets that letter of Sept. 15, just received, shows fear of lack of provisions; has no fear himself; sends [Lt. George] Coventry's return of provisions gathered, and states that more can be raised. Auto. Draft. 3pp.

1759. Sept. 21. **Mortier,** Abraham. New York. Letter to [John] Bradstreet. Has sent money to Albany to pay his note for £2500 to Bradstreet, so that he may have cash if he prefers. A. L. S. 1p.

1759. Oct. 16. **Appy,** J[ohn.] Crown Point. Letter to [John] Bradstreet. Acknowledges letter of Oct. 11 to [Maj.] Genl. [Jeffrey Amherst] and refers him to latter's letter of Oct. 10 for instructions as to the sick in the New York regiment; other questions left to Bradstreet's discretion until return of

Amherst; some information from letters of Brig. Genl. [Thomas] Gage. L. S. 1p.

1759. Dec. **Glen,** John. Schenectady. To Commissary Officers [and whom it may concern.] Orders to pass provision batteaux; on delivery of goods acknowledgment to be made and deficiency to be noted on orders; names of men engaged in carrying provisions from Little Falls [Whitehall, N. Y.] to Fort Herkimer. A. D. S. 1p.

1760. Jan. 1. **Stout,** Jonathan and 102 others. Elizabeth Town, [N. J.] To Capt. John Riky. Power of attorney to receive and receipt for wages due in the batteau service. D. S. 3pp.

1760. Feb. 4. [**Bradstreet,** John.] Albany. Letter to [Sir Jeffrey Amherst]. Sends two sworn waggon accounts to "show what little faith, truth or honor there are in complaints so frequently made"; disputes regarding demands of previous year; urges that preparations be begun at once for any campaign intended in 1760. Auto. Draft. 2pp.

1760. Feb. 18. **Mortier,** A[braham.] New York. Letter to [John] Bradstreet. Regrets his inability to pay balance of Bradstreet's warrant for £12,631.19s. 6d. in favor of [Capt. Daniel] De Normandie but military chest is not able to advance that sum. A. L. S. 1p.

1760. Feb. 21. **Appy,** J[ohn.] New York. Letter to Thomas Hancock. Notifies Hancock of arrival of dispatches for [Maj.] Genl. [Jeffrey Amherst] and circular letters for the several governors calling for new levies for approaching campaign; specifies various letters sent Hancock to be forwarded; acknowledges letter of Jan. 16 and thanks him for articles sent. L. S. 1p.

1760. Mar. 9. **Mortier,** Abraham, New York. Letter to [John] Bradstreet. In response to orders from [Maj.] Genl. [Jeffrey Amherst] has endeavored to obtain for Bradstreet a credit of £8000 in New England; [Charles Ward] Apthorp informs him that he has no money at Boston and there is none available at New York; small amounts elsewhere. A. L. S. 2pp.

1760. Mar. 18. [**Bradstreet,** John.] Albany. Letter to [Joshua] Loring. In reply to letter of Mar. 13, states that "the King's service requires 50 good ship carpenters over and above the 50 mentioned" to build batteaux at Albany; has acquainted the General [Amherst] with his demand "wherefore for the Publick and your own sake don't fail." Auto. Draft. 1p.

1760. Mar. 30. [**Bradstreet,** John.] Albany. Letter to [Sir Jeffrey Amherst]. Provisions received from contractors and application made to Brig. Genl. [Thomas] Gage for troops to move them; no cedar boards arrived but 29 of [Joshua] Loring's carpenters are at work [on boats]. Auto. Draft. 1p.

1760. Sept. 14. [**Bradstreet,** John.] Albany. Letter to [Sir Jeffrey Amherst, Montreal.] Congratulates him on the capture of Montreal and the reduction of Canada; outlines work of forwarding provisions; amount at Oswego and amount reported by [James] DeLancey as being at or near Albany; requests a warrant for £10,000 by bearer Capt. [Philip] Schuyler. Auto. Draft. 2pp.

1760. Oct. 23. [**Bradstreet,** John.] Albany. Letter to [Philip Schulyer]. Thanks him for proffered services in settling his [Bradstreet's] accounts; hopes that [William] Pitt will remember his [Bradstreet's] service in the subjugation of Canada;

suggests that the command of a regiment or the Governorship of New York would be an appropriate compensation; hopes [Schuyler] will recommend him for such an appointment; "the American world await with impatience" his reward "and if I get nothing they will be no less surprised than myself." Auto. Draft. 2pp.

1760. Nov. 11. **Clark,** Joel. [Albany.] To John [Bradstreet] Sworn lists of batteau men serving under Clark's command Jun. 22 [to date]; first list contains 11 names, second list 7 names, third list 34 names. Two lists are sworn to by Clark. D.S. 3pp.

1760. Dec. 7. **[Bradstreet,** John.] Albany. Letter to [Sir Jeffrey Amherst]. By Act of Provincial Assembly [of New York] all persons impressing horses etc. for the war are held personally responsible; trouble occasioned his agents by this law; gives instances; ingratitude of people to British for protecting them; they give nothing without being paid for it "being spurred on by a nest of Harpies"; asks that something be done for the relief of his agents, who are suffering for impressments made in the line of duty. Auto. Draft. 3pp.

1760. Dec. 8. **Mortier,** Abraham. New York. Letter to [John] Bradstreet. Acknowledges letter of Nov. 30 enclosing [Maj.] Genl. [Jeffrey] Amherst's warrant for £8000 in his [Bradstreet's] favor with receipts for same; will see that all his bills are paid promptly as those in favor of Capt. [George] Middagh and Col. Van Schack [Capt. Goose Van Schaick?] have been; ship *Dover* brought no money from Great Britain; other military news. A. L. S. 1p.

1760. Dec. 28. **Amherst,** Sir Jeffrey. New York. Letter to John Bradstreet. Acknowledges letter of Dec. 21;

has received complaints against Lt. [George] Coventry from Sheriff [Goose] Van Schaick but waits to hear both sides before taking action and will present what Bradstreet has said in Coventry's behalf; is about to apply for commission for [Abraham] Cuyler as Deputy Postmaster at Albany. A. L. S. 2pp. mutilated.

1761. Jan. 17. **Mortier,** Abraham. New York. Letter to John Bradstreet. Acknowledges letter of Jan. 12 by [Cornelius] Cuyler; paid him balance of Bradstreet's account as directed after charging exchange; arrival of the *Fowey* with some money; congratulates Bradstreet on victory of [Frederic] King of Prussia over Count [Leopold Joseph Maria von] Daun [at Torgau, Nov. 23, 1760]. A. L. S. 2pp.

1761. Jan. 17. **Mortier,** Abraham. New York. To John Bradstreet. Statement of account Nov. 19, 1760 to date, showing expenditure of [Maj.] Genl. [Jeffrey] Amherst's draft of Nov. 19 for £8000. A. D. S. 2pp.

1761. Feb. 2. [**Bradstreet,** John.] Albany. Letter to [Sir Jeffrey Amherst]. No unnecessary labor to be spent upon the Hudson river barracks; has investigated claim of Cornelius Buys for batteau service in 1756 and finds it baseless; notes as to condition of service; is obliged that [Philip] Schuyler is to be sent to England on first war ship or packet. Auto. Draft. 1p.

1761. Mar. 9. **Amherst,** Sir Jeffrey. New York. Letter to [Joshua] Loring. Proposes that provisions be moved from Louisburg by traders from Boston to Quebec; Loring is to notify Boston captains through Thomas Hancock and to inform Gov. [Edward] Whitmore [of Louisburg] of names of vessels engaged. Cont. Copy. 1p.

1761. **Butler,** John. [Canawago.] Letter to Jellis Fonda.
Apr. 26. Certificate of amounts of money given Fonda for payment of various persons and accounts. A. D. S. 1p.

1761. **Mortier,** Abraham. New York. Letter to John
Nov. 4. Bradstreet. Acknowledges letter of Oct. 31; had packed the money to be sent him in box and put it on board a sloop about to sail; various charges and accounts paid; amount sent. A. L. S. 1p.

1761. **Mortier,** Abraham. New York. Letter to [John]
Nov. 5. Bradstreet. Encloses warrant of [Lt.] Genl. Sir Jeffrey Amherst for £8000 in his favor; requests that warrant be endorsed and returned with customary receipts. A. L. S. 1p.

1761. **Amherst,** Sir Jeffrey. New York. Letter to [John]
Nov. 15. Bradstreet. Acknowledges letter of Nov. 9 and is much surprised at the movements of various provincial regiments; reports necessary from officers at Oswego and Fort Stanwix; has heard from Capt. [Joshua] Loring of loss of the *Anson* on Lake Ontario; encloses warrant for £6000; has promoted Lt. [Samuel] Bradstreet to a company in 40th regiment. L. S. 2pp.

1761. **Coventry,** George. [Albany.] To [John Bradstreet].
[Dec. 7.] Account of monies paid to 45 men [names given] of 55th regiment employed in transportation service at Lake George from Jul. 30 to Aug. 12, 1761, with receipt for same. D. S. 1p.

1761. **Mortier,** Abraham. New York. Letter to [John]
Dec. 16. Bradstreet. Acknowledges letter of Dec. 11, enclosing order of [Lt. Genl.] Sir Jeffrey Amherst in Bradstreet's favor for £6000; various bills paid and the balance turned over to [John] Glen. A. L. S. 1p.

1762. Feb. 10. **Amherst,** Sir Jeffrey. New York. Letter to [John] Bradstreet. Arrival of the *General Wall* with letters for the army in New York and Canada; forwards letters with packets of his own for commanding officers at Fort George and the Governors in Canada. A. L. S. 1p.

1762. "Feb. 29." **Bergstrom,** J [ ] G. Little Niagara. To [John] Bradstreet. Certificate of impressment into the service of horses and cattle belonging to Stedman & Allen, with receipt of latter for wages paid. A. D. S. 2pp.

1762. May 17. **Mortier,** Abraham. New York. Letter to [John] Bradstreet. Encloses Capt. William Ogilvie's bill on John Stevenson in writer's favor for £1565; asks if bill is accepted. A. L. S. 1p.

1762. Nov. 8. **Mortier,** Abraham. New York. Letter to [John] Bradstreet. Acknowledges letter of Nov. 3 by [John] Carns, enclosing warrant of [Lt.] Genl. [Sir Jeffrey Amherst] in Bradstreet's favor for £5000; returns warrant for Bradstreet's endorsement. A. L. S. 1p.

[1763.] [Jan. 9.] **Mortier,** Abraham. [New York.] Letter to [John] Bradstreet. Acknowledges letter of Bradstreet enclosing paper of Maj. [Robert] Rogers; financial dealings with Rogers and Bradstreet. A. L. S 1p. mutilated.

1763. Mar. 21. **Mortier,** Abraham. New York. Letter to [John Bradstreet]. Acknowledges letter of Mar. 14, enclosing warrant of [Lt.] Genl. [Sir Jeffrey Amherst]; warrant not so large as order given earlier; expects Bradstreet to make up the difference either in cash from next warrant received or by payment to Capt. [William] Winepress. A. L. S. 1p. and Auto. duplicate enclosed in Mortier to Bradstreet, Apr. 9, 1764.

1763. **Cuyler,** Abraham. Niagara River, Lake Erie.
May 9. To [John] Bradstreet. Certificate that he has taken into the service a boat belonging to John Stedman. A. D. S. 1p.

1763. [**Bradstreet,** John.] Albany. Letter to [Sir Jeffrey
May 23. Amherst.] Calls attention to encroachments made by the city of Albany upon lands which the Crown has used since 1758 for military purposes; claims of others rest on charter from the Governor; considers it a good time to enforce the claim of the Crown; privileges granted the city by new charter; submits a copy of charter for consideration. Auto. Draft. 3pp.

See: Bradstreet to Thomas Gage. Oct. 14, 1765.

1763. **Amherst,** Sir Jeffrey. New York. Letter to [John]
Jul. 28. Bradstreet. Awaits news from Detroit and the South; last reports from Maj. [Henry] Gladwin were favorable and Maj. [John] Wilkins will forward more as received; Havana returned to Spain; most of the English troops in West Indies will return to Europe but some may go to Canada; advises Bradstreet to keep up connections with North and West if those sections are not restored to peace. L. S. 2pp.

1763. **Wilson,** John. Fort Ontario. To John Glen.
Aug. 9. Certificate that John Bone brought load of artillery from Fort Stanwix to Fort Ontario. A. D. S. 1p.

1763. **Amherst,** Sir Jeffrey. New York. Letter to [John]
Aug. 20. Bradstreet. Acknowledges letter of 15th; satisfied with work accomplished; under new arrangement small posts are to be abandoned, so requests names of persons to whom they may be given and who can be relied upon to deliver them to the Crown in case of need. L. S. 1p.

1763. **Maxwell,** William. Schenectady. To Commissary
Aug. 20. Officers. Orders to pass provision batteaux for various posts. A. D. S. 2pp.

1763. **Amherst,** Sir Jeffrey. New York. Letter to [John]
Aug. 28. Bradstreet. Acknowledges letter of Aug. 21 with enclosures regarding the Dutch church at Albany; reports victory of Col. [Henry] Bouquet at Bushy Run [near Fort Pitt] over a large body of Indians; summary of losses on both sides; has ordered officers communicating with Fort Pitt to furnish no supplies to Indians and to allow no trader to go among them; has written [Maj.] Genl. [Thomas] Gage to prevent traders going up the St. Lawrence and Bradstreet is to allow none to go out from Albany until further orders. L. S. 2pp.

See: Bradstreet to Thomas Gage. Oct. 14, 1765.

1763. [**Bradstreet,** John.] Albany. Letter to [Sir Jeffrey
Aug. 29. Amherst.] In obedience to letter of Aug. 20, will look out for proper persons to take charge of small posts; movements of Lts. [James] Gamble and [Arthur] St. Clair; demand of Maj. [John] Wilkins for bedding at Niagara; needs at Detroit. Auto. Draft. 2pp.

1763. **Mortier,** Abraham. New York. Letter to [John] Brad-
Sept. 19. street. Has paid and charged to his account a bill for £200 drawn on him by Mrs. Bradstreet and presented by [William] Bayard; latter received it from [Nathaniel] Wheelwright of Boston. A. L. S. 1p.

1763. **Detroit,** Inhabitants of. [Detroit.]
[Sept.?] Abstract of the losses of the inhabitants of Detroit by fire etc. during the summer of 1763; names of 20 persons given including one Englishman and one interpreter, with amount of loss of each. Cont. Ms. 1p.

1763. Dec. 4. **Mortier,** Abraham. New York. Letter to [John] Bradstreet. Acknowledges letters of Nov. 22, 25 and Dec. 2; warrant of [Lt. Genl.] Sir Jeffrey Amherst in his favor for £7000 shall be cashed and forwarded to him at Albany; can send £5000 in a few days and the remainder soon if there is pressing need; is much surprised that he has received no forage money for past three years; similar grants have been made to Col. [James] Robertson. A. L. S. 2pp.

1763. Dec. 12. **Mortier,** A[braham.] New York. Letter to [John] Bradstreet. Is informed by [William] Bayard in behalf of [Charles Ward] Apthorp that the whole of the warrant for £7000 shall be paid Bradstreet at Albany by [Abraham] Douw; states condition of Bradstreet's account with him. A. L. S. 2pp.

1763. Dec. 19. **Mortier,** Abraham. New York. Letter to John Bradstreet. Has supplied him with a credit for £1000 at Nathaniel Wheelwright's, Boston, in accordance with order of [Maj.] Genl. [Thomas] Gage, dated Dec. 17; acknowledges receipts for warrant of [Lt.] Genl. [Sir Jeffrey] Amherst in his favor for £7000; notes certain details relating to accounts and warrants, and bill of £50 to Mrs. Bradstreet. A. L. S. 1p.

1763. Dec. 20. **[Bradstreet,** John.] Albany. Letter to [Sir Jeffrey Amherst]. Report received from Capt. [Joshua Loring as to transportation of provisions by boat to Niagara; others should be sent by land; need of ship carpenters, ironworkers and supplies at Oswego during the winter; Lt. Col. [William] Browning will furnish protection. Auto. Draft. 2pp.

1764. Jan. 2. **Mortier,** Abraham. New York. Letter to [John] Bradstreet. Acknowledges letter by Capt. [Josh-

ua] Loring; regrets that Bradstreet was disappointed in receiving no money by messenger; former should draw an order on some person in New York or send messenger of his own; in either case Mortier will pay money on demand. A. L. S. 1p.

1764. Jan. 27. **McKeen,** Robert. Cherry Valley. To [John Bradstreet]. Certificate that Adam Brown has brought baggage for McKeen's company. A. D. S. 1p.

[1764.] [Jan.] **Macvicar,** Duncan. [Albany.] Letter to John Bradstreet. Reports the mustering in of company of Capt. [Nathaniel] Tyce; poor quality of the company. L. S. 1p.

1764. Feb. 6. **Mortier,** A[braham.] New York. Letter to [John] Bradstreet. Sends him by [John] Kendrick £3000 in good paper money; has paid B[everly] Robinson £500 on account; requests acknowledgment on receipt of money sent. A. L. S. 1p.

1764. Mar. 19. **Lamb,** Anthony. [New York.] To John Bradstreet. Account for surveying implements furnished, £57, 15s. 6d. with receipt dated Jul 20. A. D. S. 1p.

1764. Mar. 28. **Browning,** William. Niagara. To [John Bradstreet.] Certificate of service performed by John Stedman with two horses, with receipt of Stedman, dated Mar. 20, 1766. D. S. 2pp.

1764. Apr. 9. **Mortier,** Abraham. New York. Letter to [John] Bradstreet. Acknowledges letters of Apr. 1 and 4; proceeds to make clear the accuracy of his account with Bradstreet, enclosing copy of letter of Mar. 21, 1763 in further explanation; thanks Bradstreet for lumber sent. A. L. S. 3pp.

1764. Apr. 11. **Roberts,** B[enjamin.] Niagara. To [John Bradstreet]. Certificate of services performed by John Stedman with his horses, with receipt of Stedman dated Mar. 20, 1766. D. S. 2pp.

1764. Apr. 30. [**Bradstreet,** John.] Letter to [Thomas Gage]. Movements in preparation for the campaign against Detroit. Auto. Draft. 2pp.

In Sir William Johnson Manuscripts ante p. 14.

1764. May 5. [**Bradstreet,** John.] Albany. Letter to [Sir William Johnson]. Garrisons to be left in various New York posts; request Johnson to await him at Oswego. Auto. Draft. 2pp.

In Sir William Johnson Manuscripts ante p. 14.

[1764.] May 7. **Bradstreet,** John. Albany. Letter to [Thomas] Gage. Provincial troops for the expedition against Detroit; understands that Sir William Johnson will bring Indian recruits. A. L. S. 1p.

In Sir William Johnson Manuscripts ante p. 15.

1764. May 7. **Glen,** John. Schenectady. To Commissary Officers. Bearers of letter not to be stopped or hindered as they have provisions in their boats for [Lt.] Col. [John] Campbell and 17th regt; boats in charge of John Miller. A. D. S. 1p.

1764. May [**Bradstreet,** John.] Fort Ontario. Deserters from troops commanded by. Descriptive list of men who deserted from the New York provincial troops after leaving Schenectady; six men are named from the company of Capt. [Richard] Rea, five from that of Capt. [John] Degarius, four from that of Capt. [John] Grant, two from that of Capt. [Henry] Dawson, two from that of Capt. [Alexander] Whyte. In ms. of a clerk. 2pp.

1764. May 23. [**Bradstreet,** John.] Albany. Letter to [Thomas Gage]. Troops at Detroit lodged in houses of

people; suggests that carpenters be sent from Albany to erect barracks; encloses return of 80th regiment and of the garrison at Niagara; many companies are short of their complements. Auto. Draft. 1p.

1764. May 25. **Duncan,** Alexander. Albany. To [John Bradstreet]. Certificate of names and companies of 15 men employed as axe men, preparing timber for the Niagara carrying place, Mar. 26-Apr. 10, 1764, with wages due each. D. S. 1p.

1764. Jun. 27-Nov. 29. **Bradstreet,** John. Orderly Book. Orderly Book of regiment commanded by Col. Bradstreet at Forts Ontario, Niagara and Erie, as also at Detroit and Albany. 1 vol. 128pp.

1764. Jul. 12. [**Bradstreet,** John.] Niagara. Letter to [Thomas] Gage. Delay in campaign due to distrust of Indian troops; Sir William Johnson considers it unsafe to proceed at once; hopes to make a better report soon. Auto. Draft. 3pp.

In Sir William Johnson Manuscripts.

1764. Jul. 19. **Bradstreet,** John. Niagara. To Indian Traders at Niagara. Proclamation granting liberty to trade with distant Indian Nations at Niagara and prescribing regulations under which such trade should be conducted. D. S. 1p.

This proclamation is reproduced in facsimile facing p. 59.

[1764.] [July] **Luke,** John. [Niagara.] Plan of Fort Niagara. Auto. Ms. 1p.

1764. Aug. 31. **McDougall,** George. Detroit. To [John Bradstreet]. Return of the detachment of 118 men from 60th regiment under his command. A. D. S. 1p.

1764. Sept. 6. **Abbott,** Edward. Detroit. To [John Bradstreet]. Receipt for stores with detailed list of same. A. D. S. 3pp.

1764. **Abbott,** Edward. Detroit. To [John Bradstreet].
Sept. 10. Return of ordnance, ammunition and stores left for a supply to the garrison of Detroit. A. D. S. 5pp.

1764. [**Bradstreet,** John.] Detroit. Letter to [John
Sept. [10?] Campbell]. Places town and colony of Detroit in his hands; directions for protections of Indians in their rights but for careful watch over them as well; method of government to be modelled after that of Montreal; instructions for Capt. [William] Howard and Lt. [John] Sinclair left with him; any instructions from [Maj.] Genl. [Thomas] Gage to be followed at once. Auto. Draft. 4pp.

1764. [**Bradstreet,** John.] Detroit. Letter to [Thomas]
Sept. 12. Gage. Gives an account of his negotiations at Detroit with various papers showing same in detail. Auto. Draft. 2pp.

In Sir William Johnson Manuscripts ante p. 16.
See: Proclamation of Bradstreet, Jul. 19, 1764.

1764. [**Bradstreet,** John.] Detroit. Letter to [Thomas]
Sept. 12. Gage. Outlines plans for maintenance of position at Detroit and the control of the surrounding Indians. Auto. Draft. 1p.

In Sir William Johnson Manuscripts ante p. 17.

[1764.] [**Bradstreet,** John.] Notes for expedition against
[Sept.] Detroit. This volume contains many notes and records of use to an army moving against Detroit and the West. Among them are manuscript maps of the great lakes, the names and locations of various Indian tribes, notes as to camping places, etc. Some notes appear to have been made before the setting out of the expedition and others to have been added during its course. 1 vol. 27pp.

1764. Oct 3. **Martin,** S[amue]l. Detroit. To [John Bradstreet]. Receipt for £400 New York currency in payment for books and merchandise for the Indians. A. D. S. In French. 1p.

1764. Oct. 5. [**Bradstreet,** John.] Sandusky. Letter to [Thomas Gage]. Is aroused over breaking of peace by Indians; Oneidas and Senecas the leaders; other details. Auto. Draft. 2pp.

In Sir William Johnson Manuscripts ante p. 17.

1764. Oct. 8. **Jones,** John. [Fort Edward.] To [John Bradstreet]. Return of stores delivered at Fort George and Fort Edward. A. D. S. 1p.

1764. Oct. 12. **Glen,** John. Schenectady. To Commissary Officers. Pass for bearers with bill of lading of supplies for Fort Ontario. A. D. S. 1p.

1764. Oct. 14. **LeHunte,** George, [Sandusky.] To [John Bradstreet]. Weekly return of light infantry commanded by Maj. Le Hunte. A. D. S. 1p.

1764. Oct. 14. **McDonald,** William. [Sandusky.] To [John Bradstreet]. Weekly return of the New Jersey battalion. D. S. 1p.

1764. Oct. 14. **Walton,** Joseph. [Sandusky.] To [John Bradstreet]. Weekly return of detachment of royal artillery under his command. A. D. S. 1p.

1764. Nov. 4. [**Bradstreet,** John.] Niagara. Letter to [Thomas Gage]. Encloses copies of nine letters giving summary of each in an attempt to justify his conduct during the Detroit expedition and return to Niagara. Auto. Draft. 4pp.

1764. Nov. 19. **Walton,** Joseph. [Albany] To [Francis Collyson]. Certificate of use of three horses for fourteen miles, with receipt by Collyson to

Bradstreet dated Jan. 9, 1767 for payment in full of above account. D. S. 2pp.

1764. Nov. 20. [**Bradstreet,** John.] Albany. Letter to [Thomas Gage]. Acknowledges letter of Oct. 26; attempts to explain parts played by various Indian tribes during and after the peace of Detroit. Auto. Draft. 3pp.

1764. Nov. 21. [**Bradstreet,** John.] Albany. Letter to [Thomas] Gage. Transmits record of Court of Inquiry on claims of men drafted from the 80th to the 46th regiment; other matters. Auto. Draft. 1p.

1764. Nov. 25. [**Bradstreet,** John.] Albany. Letter to [Thomas] Gage. Acknowledges dispatches received on the 24th; Maj. [Richard?] Daly takes down men of 65th regiment and will deliver this letter; proposed distribution of forces; Provincials and Canadians at Oswego. Auto. Draft. 1p.

1764. Nov. 29. [Nov. 14?] [**Bradstreet,** John.] Albany. Letter to [Thomas] Gage. Trouble over payment of men engaged by order of Gage; pay-master of New York battalion refused to pay men; hopes Gage will set matters to rights. Auto. Draft. 1p.

See: letters of Feb. 2 and Feb. 25, 1765.

1764. Dec. 17. **Robinson,** Beverly. New York. To John Bradstreet. Account of monies paid by Col. Bradstreet for pitch, tar, etc. sent to Albany for service of the Crown from Mar. 26 to Oct. 13, 1764. D. S. 3pp.

1764. Dec. 23. **Hill,** Launcelot. Albany. To John Bradstreet. Account of monies paid to 19 men of 55th regiment employed in carpentry or batteau service. Account is from Sept. 19 to Oct. 3, 1764, and is receipted by Hill. D. S. 1p.

1764. Dec. 24. [**Bradstreet,** John.] Albany. Letter to [Thomas Gage]. Acknowledges letter of Dec. 15; supposes he is free to tell officers that Gage will not forward their petition as to land at Detroit; encloses return from Capt. [Hugh] Arnot of 46th regiment commanding at Oswego; would have sent highlanders to Fort George but Gage's orders forbade it; Capt. [William] Winepress will march away as soon as road is passable. Auto. Draft. 1p.

[1764.] [Dec?] [**Bradstreet,** John. Albany]. Letter to [Thomas Gage]. Plan for conciliation of Indians in Northern districts of North America; recommends distribution of agricultural implements, horses, etc. among them and the settlement of missionaries as was done by the French; estimates the expense and suggests that the whole affair be conducted by the Crown and not by the colonies; considers the Oneidas and Hurons as best tribes on which the experiment should be first tried. Auto. Draft. 4pp.

[1764?] [**Bradstreet,** John. Albany]. Letter to [Thomas Gage]. Encloses accounts of Baxter and Humphrey with original receipts of individual wagoners employed by that firm in the public service; vouches for the accounts; believes that even [James] Livingston can find nothing to find fault with in them. Auto. Draft. 1p.

1765. Jan. 2. **Christie,** John. Fort George. To [John Bradstreet]. Certificate of service performed by Peter Fonda in transporting troops in British service, with receipt by Fonda dated Oct. 8, 1766. D. S. 2pp.

1765. Jan. 23. **Degrov,** [Michel.] Albany. To [John] Bradstreet. Two receipts for £7 and £27, payment for services as interpreter to Indians on campaign [of 1764]. D. S. 2pp.

1765. Feb. 2. [**Bradstreet,** John.] Albany. Letter to [Thomas] Gage. Encloses monthly return of 46th regiment and state of garrison at Niagara received from Lt. Col. [John] Vaughan; condition of New York volunteers enlisted by Bradstreet at Gage's order; £3250 currency due these troops and they threaten to sue writer for that amount; having law and justice on their side, Bradstreet suggests that these men be paid and the colony trusted to reimburse the money. Auto. Draft. 1p.

See following entry and references.

1765. Feb. 25. [**Bradstreet,** John.] Albany. Letter to [Thomas Gage]. Acknowledges letter [of Feb?] with warrant; regrets that Gage will not provide money for payment of New York volunteers; details circumstances under which he recruited them and awkward place in which he finds himself, as both British and Colonial authorities refuse to reimburse him; case the same regarding money spent necessarily on the Indians; gives testimony of Maj. [William] Hogan that men served in British army; money due for batteau service also; poor condition of wagons and of cattle at Albany. Auto. Draft. 3pp.

See: same to same, Nov. 29, 1764, and Feb. 2, 1765; also Bradstreet to Shelburne, Nov. 2, 1766.

[1765?] [Feb.?] [**Gage,** Thomas. New York.] Letter to [John Bradstreet]. Articles in "A Brief State of the Circumstances relating to Colonel Bradstreet's enlisting 107 men for the New York Battalion in 1764 which the General objects to." In ms. of Gabriel Maturin, Secy. to Maj. Genl. Gage, 2pp. A copy of this manuscript was enclosed by Bradstreet in letter to Lord Shelburne, Nov. 2, 1766.

See preceding entry and Bradstreet, John, Account of Enlistments, Nov. 2, 1766.

1765. Mar. 14. **Maitland,** Richard. New York. To [John] Bradstreet. Directions for sending cargoes of stores or provisions from any of the King's magazines. A. D. S. 2pp.

1765. Mar. 22. [**Bradstreet,** John.] Albany. Letter to [Thomas] Gage. Winter allowances to men cutting boat timber or gathering hay; carriage of provisions; report from Capt.-Lt. [Patrick] Balneaves of conditions at Fort Edward. Auto. Draft. 1p.

1765. Mar. 23. **Fonda,** Jellis & Co. [Albany.] To [John Bradstreet]. Accounts against the Crown for provisions and transportation during 1764, with receipts by Fonda to Bradstreet for payment in full. A. D. S. 2pp.

[1765.] [Apr. 19] **Glen,** Cornelius. [Schenectady.] To [Commissary Officers and whom it may concern]. Orders to pass bearers, William Sinewood and five others in two batteaux loaded with naval stores for Fort Ontario. A. D. S. 2pp.

Attached are notes of journey of batteaux.

1765. Apr. 25. [**Bradstreet,** John.] Albany. Letter to [Thomas] Gage. Explains distribution of liquor and other presents among the Indians and requests reimbursement for money thus expended. Auto. Draft. 1p.

In Sir William Johnson Manuscripts.

1765. Apr. 30. **Arnot,** Hugh. [Niagara.] To [John Bradstreet]. Certificate of service of non-commissioned officers and privates of the 46th regt. employed Nov. 1, 1764 to date in Quarter Master General's dept. Account for each of seven companies is signed by officer of company and the whole account, £176, 18s. 6d. is countersigned by Arnot. The account bears receipt of Cornelius Cuyler dated Mar. 6, 1766. A. D. S. 2pp.

1765. April. **Albany,** Dutch Church. [Albany.] To John Bradstreet. Church account against Bradstreet for £12, 11s. 2d. payable to Whitehead Hicks in behalf of the church. The account is made out in the name of the minister, elders and deacons of the church and accompanying it is a receipt for the payment of the account, dated Nov. 12, 1766, signed by E[ilardus] Westerlo jr. D[eputy] W[arden]. D. S. 2pp.

[1765.] [April?] [**Bradstreet,** John.] Albany. Letter to [Thomas Gage]. Forwards letters by express; is about to send provisions to Fort Stanwix in large quantity unless this be considered unwise and order countermanded [by Gage]; considers the French "at the bottom of this Indian affair and the Five Nations as ripe for putting their grand scheme into execution as any" [other Indians]. Auto. Draft. 1p.

1765. May 2. **Grant,** A[llan?] Schenectady. To [John Bradstreet]. Certificate of services of Samuel Staats in transporting naval stores. A. D. S. 1p.

1765. May 3. **Glen,** John. Sch[enecta]dy. To the Commissary Officers [and whom it may concern]. Order to pass bearers with provision batteaux; if goods are delivered receipt to be given and any deficiency to be noted on order. A. D. S. 1p.

Above is followed by bill of lading of batteaux in charge of Evert Van Gis; six batteaux loaded by Van Gis and eighteen others, all to be delivered at Oswego.

1765. May 8. **Glen,** John. Schenectady. To "John" [Jellis] Fonda. Certificate that Fonda is in charge of engineer stores to be delivered at Fort Ontario, with directions that he be not delayed on any account and that receipt for delivery be made out by officer receiving stores. Attached are receipts of David Buffington dated May 20

for goods, and of Fonda, dated Jul. 23, 1766, for money in payment of services. A. D. S. 1p.

1765. May 22. **Demler,** George. Fort Stanwix. To John Glen. Certificate of services in transporting stores, performed by William Quin, with receipt of John Monier, dated Nov. 1, 1766, in payment of above services. A. D. S. 2pp.

1765. May 23. **Etherington,** George. Fort George. To John Bradstreet. Certificate of services in transporting baggage, performed by Charles McKay and duplicate in favor of Samuel Dox. Attached are receipts by Guert Van Schoonhoven, dated Jul. 19. A. Ds. S. 2pp. each.

1765. May 24. **Cooke,** John. Fort George. To Henry Dowlar and two others. Certificate to Henry Dowlar, Andrew [Andris] Johnson and William Peters for provisions from Halfmoon with receipt by Johnson, dated Aug. 13, 1766, in full of account. A. D. S. 1p.

1765. May 24. **Vaughan,** John. Niagara. To John Bradstreet. Encloses bill of John Stedman against Bradstreet for services as wagon master at Niagara, 1764-1765; certifies as to employment as stated and that bill should be paid by Bradstreet. On verso is receipt of Stedman [Feb.] 2, 1766 for payment of above account. D. S. 1p.

1765. May 25. **Glen,** John. Schenectady. To Commissary Officers [and whom it may concern]. Directions for passing bearers of letter with provision batteaux; deficiencies to be noted; goods to be delivered to Douw Fonda by James Cary and five men and are for use of Indians. Attached are receipts of Fonda of May 26 and of Cornelius Cuyler of Nov. 6, in payment of services rendered. A. D. S. 1p.

1765. Jun. 11. **Glen,** John. Schenectady. To Commissary Officers [and whom it may concern]. Orders to pass bearers with provision batteaux; when goods are delivered, receipt is to be given and any deficiency noted on orders. Attached are bills of lading for six batteaux and receipt signed by Edward Smyth at Fort Stanwix Jun. 16 for goods listed. A. D. S. 1p.

1765. Jun. 14. **McIntosh,** George. Fort Edward. To [John] Bradstreet. Certificate of services of John Fluree [Flower?] employed four and one-half days in repairing boat used as ferry near Fort Edward. A. D. S. 1p.

During July, similar certificates of services performed were given Bradstreet regarding Martin Van Alstyn, John Feather, Solomon Pitcher and Daniel Dunham.

1765. Jul. 17. **Duncan,** John. [Schenectady.] To [John Bradstreet]. Sworn statement before John Glen jr., as to character and price of lumber furnished. D. S. 1p.

1765. Aug. 4. [**Bradstreet,** John.] Albany. Letter to [Thomas Gage]. Acknowledges letter of Jul. 29, enclosing petition of [Mathew] Trotter; petitioner was offered as much pay as he had earned but refused it; charges were too high; asks instructions as to enlistment of deserters and interpretation of act of Parliament for quartering troops etc. upon the people. Auto. Draft. 1p.

This measure for quartering soldiers upon Americans was passed in Apr. 1765, being an extension of the Mutiny Act to America. It was known as the Quartering or Billeting Act in the Colonies.

[1765.] [Aug. 7?] **Glen,** John. [Schenectady.] To [Commissary Officers and whom it may concern]. Orders [to pass Abraham Van Eps and eight men] with provision batteaux en route to Oswego. Four notes regarding the trip to Sept. 1 are attached. A. D. S. 2pp.

1765. Aug. 10. **Glen,** John. Schenectady. To [John] Bradstreet. Certificate of batteaux for royal service delivered by Eleazer Cawey with receipt of Henry Glen in behalf of Cawey dated Jul. 23, 1766 for payment in full of account. A. D. S. 1p.

1765. Aug. 12. **Glen,** John. Schenectady. To Commissary Officers [and whom it may concern]. Orders to pass bearers with provision batteaux; on delivery of goods receipt to be given and any deficiency to be noted on orders; Andrew Wimple in charge of batteaux and provisions are to be delivered to Douw Fonda for use of Indians at Caughnawa. Attached are receipts of Fonda dated Aug. 14 for goods and of Peter Comyn dated Nov. 6 for services performed. A. D. S. 1p.

1765. Aug. 13. **Glen,** John. [Schenectady.] To Commissary Officers [and whom it may concern]. Orders to pass bearers with provision batteaux for Fort Stanwix; when goods are delivered receipt to be given and deficiencies noted on orders. Attached are three notes regarding passage of boats. A. D. S. 2pp.

1765. Aug. 18. **[Bradstreet,** John.] Albany. Letter to [Thomas] Gage. Acknowledges letter of Aug. 12; allowance of wagons to a regiment made by Sir Jeffrey Amherst; difference of conditions between taking the field and marching to port; is forwarding tobacco in accordance with orders. Auto. Draft. 1p.

1765. Sep. 1. **Grant,** Allan. Fort George. To [John] Bradstreet. Certificate of services of Vincent Benneway [or Benoit] in movement from Albany to Fort George with receipt of Benneway dated May 25, 1766 for payment of account. A. D. S. 1p.

Similar certificates were given Bradstreet during September and October regarding Jacob Van Vordt, Jykeris

Van der Bogart, Cornelius Cuyler, and notes as to services of John Heimstrart, Lawrence Clew and Henry and Isaac Lawnson. Many of these manuscripts have receipts for payments for services attached.

1765. Oct. 14. **[Bradstreet,** John.] Albany. To [Thomas] Gage. States charge made against himself by the Atty. Genl. of New York in dispute with "Dutch Church"; is charged with using and injuring lands of church 1759-1762 to extent of £1000; despite lack of proof that land belonged to church or that any trespass was made by his order and refusal of Commander in Chief [Sir Jeffrey Amherst] to support claim, arbiters decide that he must pay £210; advises Gage to submit proceedings to the king's ministers together with copy of charter of city under which land is claimed; charter is not good in law and people should be informed that there is no basis for claim. Auto. Draft. 2pp.

See: Bradstreet to Sir Jeffrey Amherst, May 23, and Amherst to Bradstreet, Aug. 28, 1763.

1765. Oct. 31. **Arnot,** Hugh. [Niagara.] To [John Bradstreet]. Certificate of service of non-commissioned officers and privates of the 46th regiment employed May 1 in Quarter Master General's department. Account for each of eight companies is signed by officer of company and the whole account, £68. 18s. is countersigned by Arnot. On verso is receipt by Cornelius Cuyler to Bradstreet dated Mar. 6, 1766. A. D. S. 2pp.

1765. Nov. 9. **Glen,** John. Schenectady. To [John] Bradstreet. Statement of account of Teunis Van Vleck against the Crown for carriage of baggage fourteen days, with receipt of Van Vleck dated Jul. 15, 1766 in full of above charge. A. D. S. 1p.

1765. Nov. 10. **Glen,** John. Schenectady. To [John] Bradstreet. Certificate of service of Adam Smith in impressment of carriages for King's use with receipt

of Smith dated Apr. 7, 1766, in full of above charge. A. D. S. 2pp.

1765. Nov. 17. [**Bradstreet,** John.] Albany. Letter to [Thomas] Gage]. Sickness of barrack master at Fort Edward; difficulties in procuring wood for the winter; supplies which need renewing; poor condition of roads. Auto. Draft. 1p.

1765. Nov. 23. [**Bradstreet,** John.] Albany. Letter to [Thomas Gage. Acknowledges letter of Nov. 17; to prevent the corporation of Albany destroying the new barracks before arrival of additional troops has moved a portion of the garrison thither; encloses copies of correspondence with the Mayor on the matter, also return of additional troops; bearer of letter has petition of Assembly regarding men raised for the New York battalion in 1764. Auto. Draft. 1p.

1766. Feb. 17. **Byerly,** Frederick. Fort Edward. To Gerrit Knoet [Abert?]. Receipt for 12 bbls. of flour brought to post by Gerrit Knoet, Jacob Knoet and Nicholas Van Vrank. Attached is receipt of Apr. 13, for payment for flour. A. D. S. 2pp.

1766. Feb. 28. **Maitland,** Richard. New York. To [John Bradstreet]. General orders respecting marching of troops and all contingent charges; method of arranging accounts; allowances for detachments; payment of incidental expenses, etc. D. S. 3pp.

1766. Mar. 10. **Vaughan,** John. New York. To John Bradstreet. Account of money due Quartermaster George Butrick of the 46th regiment in payment of wages of four men for 36 days' service making hay at Niagara, £7. 4s. N. Y. currency. Attached is receipt of Butrick dated Mar. 16 for above account. D. S. 1p.

1766. Mar. 24. **Bayley,** William. Schenectady. To [John Bradstreet]. Certificate of services of John Vedder and of Jean Baptiste Van Eps in transporting provisions from Albany. Attached is receipt of Jacob W. Schermerhorn dated Aug. 14 for payment in full for Vedder's services. A. D. S. 3pp.

1766. Jun. 14. **Maitland,** Richard. New York. To [John] Bradstreet. Orders for march of six companies 1st battalion, Royal American regiment to Quebec. D. S. 1p.

1766. Jun. 30. **Bleecker,** Henry, jr. Albany. To John Bradstreet. Receipt of £7. 4s. "which with £80 from * * * Abraham Dow" is for the pay of the late Anthony Bleecker, Interpreter May 1-Dec. 4, 1764 in the [Indian] expedition of that year. D. S. 1p.

1766. Jun. 30. **Gage,** Thomas. New York. To [John] Bradstreet or Officer in command at Albany. Directs examination of evidence against John Dubell and Garret Van Slyke of Albany for aiding deserters; information may be obtained from Capt. [Philip] Schuyler; four deserters named. L. S. 2pp.

1766. Jul. 1. **Glen,** John. Schenectady. To [John] Bradstreet. Certificate of batteaux for royal service delivered by John Johnson and Adam Fonda. Attached is receipt of Jellis Fonda dated Jul. 23 for payment in full of above account. A. D. S. 1p.

During July similar certificates of service performed or of material furnished were given Bradstreet regarding Jan Vrooman, Jacob Hemstreack, Gerrit Knoet [Abert?] and John Van Vrank all of which have receipts attached for payment of services rendered.

1766. Jul. 4. **Carye,** L[ucius] F[erdinan]d. Fort Edward. To Philip Schuyler. Has been charged ferriage for 224 men and 17 wagons but finds no precedent for payment of such charges for king's

troops; if charge is just requests Schuyler to pay it and repayment will be made upon his return to Albany. A. L. S. 1p.

1766. [Jul.] 21. [**Bradstreet**, John.] Albany. Letter to [Thomas Gage]. Has applied to the Mayor [of Albany] as to completion and furnishing of barracks for soldiers; reasons for existing conditions. Auto. Draft. 1p.

In Sir William Johnson Manuscripts ante p. 22. See: Bradstreet to Gage. Nov. 23, 1765.

1766. Sept. 15. [**Bradstreet**, John.] Albany. Letter to [Thomas] Gage. Acknowledges letter of Sept. 1; will follow instructions respecting 17th regiment upon their receipt; explains delay in forwarding public accounts for previous year; [Philip] Schuyler not able to sell bills upon satisfactory footing; asks if any word has been received from England as to payment of men raised for the [New] York battalion [of the 55th regiment]. Auto. Draft. 1p.

1766. Oct. 25. [**Bradstreet**, John.] Albany. Letter to [Thomas] Gage. Acknowledges letter of Oct. 20; as he was so pressing for settlement of last year's accounts writer advanced money to do so not waiting for sale of [Gage's] bills; has been informed by [Philip] Schuyler that bills have since been sold; has referred the portion of letter relating to Schuyler to that person; considers [John] Glen a very capable assistant and prefers to make up from his own pocket any reduction in Glen's salary rather than to lose that official; will send last year's account to him by Schuyler. Auto. Draft. 2pp.

[1766.] [Oct?] **Comyn**, Peter. [Albany.] To [John] Bradstreet. Statement of account showing cash received from [Maj.] Genl. [Thomas] Gage and succeeding items furnished. In Ms. of clerk. 1p.

1766. Nov. 2. [**Bradstreet**, John.] Albany. To [William Petty, Earl Shelburne?] Explains circumstances connected with his enlistment of men for the New York battalion [of the 55th regt.] by order of Maj. Genl. [Thomas] Gage Apr. 2, 1764 to date; refusal of province and of Gage to pay men; has been sued for wages of soldiers amounting to nearly £2000 and is told by lawyers that he must pay; asks whether he better enter suit against Gage for amount; has forwarded a memorial of the matter to the Treasury through Gage but has heard nothing of it; requests Shelburne's influence; will write the king or his Secretary at War if advised to do so. Auto. Draft. 2pp.

See: Bradstreet to Gage, Feb. 2 and Feb. 25, 1765; Jan. 15, 1767; and the following account.

[1766?] [Nov. 2?] [**Bradstreet**, John. Albany.] Account of enlistments in New York 1764. Account is in reply to [Maj. Genl. Thomas Gage]: "A Brief state of the circumstance relating to Colonel Bradstreet's enlisting 107 men for the New York Battalion in 1764". The reasons for the enlistment are given and the position in which Bradstreet as well as the troops enlisted are left because of the neglect of province and of Commander in Chief is set forth. Auto. Draft. 4pp.

Enclosed in preceding manuscript.
See: Gage to Bradstreet, Feb. 1765.

1766. Nov. 12. [**Albany**, Dutch Church.] Albany. To John Bradstreet. Receipt by E[ilardus] Westerlo, jr.

See: Account of the Church against Bradstreet Apr. 1765.

1766. Nov. 29. **Maturin**, G[abriel.] New York. Letter to [John] Bradstreet. Explanations [of accounts presented] are satisfactory; returns vouchers with abstract of what has been paid and what remains due on contingent account; clerk will pay balance

whenever desired; Board of Treasury hold [Maj.] Genl. [Thomas Gage] accountable for all disbursements in North America; latter desired heads of departments to have account with Treasury as before subject only to his approval. A. L. S. 2pp.

Maturin was Gage's Secretary at headquarters, New York.

1766. Dec. 4. **Maturin**, G[abriel.] Head Quarters. [New York.] Letter to [John] Bradstreet. Has examined charge for soldiers annexed to Bradstreet's memorial; requests list of such bills as Bradstreet can most conveniently use to the total of above charge; temporary receipt to be given [Maj.] Genl. [Thomas Gage] until permanent policy of Board of Treasury is known and answer to memorial received; has forwarded balance of account for 1765 and £1000 currency toward expense of current year. A. L. S. 2pp.

1766. Dec. 26. **Crippen**, Joseph. Sharon, [Conn.] To John Bradstreet. Assignment to Solomon Strong of power to collect wages when serving in company of Capt. Isaac Van Valkenburgh in 1764. The manuscript is in the hand of John Williams, is witnessed by John and William Williams, and sworn to before John Williams, Justice of the Peace. D. S. 1p.

1767. Jan. 15. [**Bradstreet**, John.] Albany. Letter to [Thomas] Gage. Acknowledges letter of Jan. 6; had no intention of asking for a gratuity when seeking reimbursement for expenses in connection with raising troops for campaign of 1764; case of Col. [Henry] Bouquet not like his nor are the cases in European service; if his "expenses for the good of the service" can not be repaid in whole requests a part, thanks Gage for services thus far rendered. Auto. Draft. 1p.

1767. Jan. 22. [**Bradstreet**, John.] Albany: Letter to [Thomas] Gage. Troops have interfered to prevent townspeople tearing down government store house; "some gentlemen of the law at New York" claim the building could be torn down as a public nuisance but troops acted in accordance with Gage's orders; fears the courts will uphold the view of the lawyers. Auto. Draft. 1p.

1767. Feb. 3. **Wood**, Draper S. Albany. Letter to John Bradstreet. Sleds wanted for Sir William Johnson's Indians. A. L. S. 1p.

In Sir William Johnson Manuscripts ante p. 23.

1767. Jun. 26. **Stephens**, James. Fort Stanwix. To John "Glyn" [Glen]. Certificate of services of Robart Strange in transporting ordnance to Schenectady; six days delay at Fort Stanwix. Attached are receipts of James Nash dated Jul. 4 for ordnance received and of Abraham Oothout dated Jan. 23, 1768 for money in payment of services rendered. D. S. 2pp.

1767. Nov. 14. [**Bradstreet**, John.] Albany. Letter to [Thomas Gage]. Understands that Assembly meets Nov. 17 and that Gov. Henry Moore is to urge payment for men enlisted by Bradstreet [in 1764]; gives account of the circumstances that Gage may submit the matter to the legislature in his own name; Col. [Philip] Schuyler will render any assistance desired in the matter; letters given to Schuyler to be placed before Assembly if Gage consents. Auto. Draft. 1p. incomplete.

1767. Nov. 22. [**Bradstreet**, John.] Albany. Letter to [Thomas Gage]. Encloses account for 1766 and will forward return of outstanding debts as soon as possible; guns taken from French at Oswego by desire of Sir William Johnson; wishes the number

received by [John] Butler for use of Indians; refers to Capt. [Gabriel] Maturin for information; sends two accounts of what is due him [Bradstreet] for campaign of 1764; one includes expenditure for secret service; by precedent of 1756 this service is allowed; if not approved, will try to have it paid "at home." Auto. Draft. 2pp.

1768. Jul. 25. **Schuyler**, Abraham. Albany. To Jellis Fonda. Receipt for five bear skins from Petrus Van Driessen. A. D. S. 1p.

1768. Aug. 2. **Glen**, John. Schenectady. To Commissary Officers [and whom it may concern]. Orders to pass bearers with provision batteaux under charge of "Wouter Dance"; on receipt of goods acknowledgment to be made and deficiencies to be noted on orders. A. D. S. (2) 2pp.

On verso are Glen's instructions to Wouter Dance and receipt from Lt. [John] Galland to Dance, each an A. N. S.

1768. Nov. 4. **Glen**, John. Schenectady. To John Bradstreet. Certificate that Cornelius Glen has furnished one batteau for royal service with receipt by Abraham Cuyler dated Jan. 10, 1771 for payment of account. A. D. S. 2pp.

1768. Dec. 20. **Glen**, John. [Schenectady.] To [John Bradstreet]. Certificate of services of Albert Vidder [Vedder?] in repairing 13 batteaux. A. D. S. 1p.

1769. Jan. 15. [**Bradstreet**, John.] Albany. Letter to [Thomas Gage]. Trouble over the payment of debts outstanding from 1767, a list of which was forwarded in Oct. [Dec.] of that year; people are sueing [John] Glen and latter, being only an agent, falls back on Bradstreet; hopes he will not be compelled to pay just debts of the army;

encloses accounts for 1768 "chiefly for Sir William Johnson's Department" and unpaid debts of 1767; disputes between late Capt. [John] Stevens and batteau men; troubles with Capt. [Joshua] Loring and testimony of Col. [Delancey] Robinson in this matter; if money is allowed as desired, writer will draw on [Abraham] Mortier for it. Auto. Draft. 2pp.

1769. Feb. 18. [**Bradstreet**, John]. Albany. Letter to [Thomas Gage]. Encloses account of contingent expenses and outstanding debts for previous year; precautions taken to prevent fraud; encloses copy of instructions from Sir Jeffrey Amherst for discharge of outstanding debts contracted during [William] Shirley's administration; trouble anticipated for [John] Glen; position of Capt. [Robert] Rogers in the past. Auto. Draft. 2pp.

[1770?] [May] **Bradstreet**, John. [Albany. To Gov. John Murray, Earl Dunmore, and the Council of New York.] Petition and argument setting forth the invalidity of the Hardenbergh patent in New York and petitioner's right to 300,000 acres of lands purchased from the Indians in 1769; purchase was by consent of Sir William Johnson and in the presence of Sir Henry Moore; requests that claim be confirmed by royal grant. The argument, framed by Bradstreet's attorney and strengthened by additions, was forwarded [by Dunmore?] to the Lords of Trade and Plantation March, 1771. Draft. 72pp.

See Docts. relating to Col. Hist. of New York, VIII, 267, 268, 271, 287, 289, 294, 347, 378, and following entry. This manuscript is printed in full on page 149 of this volume.

1771. Jan. 22. [**Johnson**, Sir William.] Johnson Hall. Letter to Col. [John] Bradstreet. Acknowledges letter of Dec., 1770; considers it but just to state that Six Nations declared that they and they only had the

right to sell lands west of Popaghtonk branch; although lands were claimed under Hardenbergh patent, Indians granted land to Bradstreet in presence of Sir Henry Moore; could be more circumstantial but thinks above statement sufficient for Bradstreet's purpose. Copy. 1p.

Draft of above is in Sir William Johnson Papers in New York State Library.

1771. Jun. 25. **Coventry**, George. Fairhill near Hamilton, [Bermuda?] Letter to John Bradstreet. Difficulties regarding his brother and his work in New York; career of latter and of his nephew; asks advice as to return to America; acknowledges letters of Dec. 9 [1770] from Bradstreet and Sept. 12 from Capt. [Philip] Schuyler. A. L. S. 2pp.

1771. Aug. 20. **Coventry**, George. Hamilton. [Bermuda?]. Letter to John Bradstreet or Capt. Philip Schuyler. Acknowledges letters of Sept. 12 and Dec. 9, 1770 from Schuyler and Bradstreet respectively; gives directions regarding management of farms; Stevenson farm at Claverack to be taken from his brother and put in charge of his nephew Alexander Patterson; other personal matters. A. L. S. 1p.

On verso in auto. of Bradstreet is list of provisions placed on board two sloops.

1772. Oct. 19. **Monier**, John. Albany. To [John] Bradstreet. Account of Post Officer at Albany against Bradstreet from Jul. 5, 1771 to Sept. 26, 1772, with receipt for payment of account in full. D. S. 1p.

1773. May 10. [**Bradstreet**, John. Albany.] Letter to [William Petty, Earl Shelburne?]. Recounts his services in behalf of the Crown from 1745 to date and declares himself to have been hardly used;

several inferior officers promoted over his head; is the only general officer in the service without a regiment; hopes for this recognition of his services although he has "not gone to England to importune for what he had a right to expect." Auto. Draft. 2pp.

Bradstreet had been promoted to a Major Generalship May 25, 1772.

1773. Aug. 20. **Glen**, John. Sche[nectad]y. To [John] Bradstreet. Returns Book of [Land] Patents; finds that he has just claim to large estate in Schenectady; movements of Gov. [William] Tyron. A. L. S. 1p.

1773. Sept. 29. **Bradstreet**, John. Albany. Letter to William Tryon. Petitions that [George] McIntosh and others from New England be put off certain lands purchased by Bradstreet from the Indians under leave of Sir Henry Moore; location of lands on main branch of Delaware river; considers Hardenbergh Patent [1706] not inclusive of his lands but rather invalid and of no force. A. D. S. 4pp.

See: Bradstreet, John. Petition May, 1770, and Docts. relating to Col. Hist. of New York VIII, 272.

1773. Oct. 11. **Coventry**, George. Fairhill, [Bermuda?] Letter to John Bradstreet. Has purchased land in Island of St. Johns; will sell home place as soon as possible for he wishes much to go to his new purchase; intends sending Alexander Patterson to begin a settlement there; asks regarding his brother; in case latter leaves farm which he is working, desires Bradstreet to put William Martin in charge; offer to his brother in case he will leave; respects to [Philip] Schuyler. A. L. S. 1p.

1773. Dec. 30. **Glen**, John. Schenectady. To [John] Bradstreet. Explanations regarding stores for the Indians; acknowledges note by Adam Condie. A. L. S. 1p.

[1773.] **Bradstreet**, John. [Albany.] State of Account with Phyn & Ellice. Existing relation between the two parties; claims against Bradstreet with reply of latter to these claims. Auto Draft. 6pp.

1777[?] Sept. 11. **Wain**, Anthony. [Albany.] To [Estate of] John Bradstreet. Account against Bradstreet for meats, with receipt in full dated Oct. 16. A. D. S. 1p.

Endorsed: Anthony Wayne.

THE CLAIMS OF
COL. JOHN BRADSTREET
TO
LANDS IN AMERICA.

NOTE.

Few Colonial land titles in America have been contested with more vigor than that of Col. John Bradstreet to certain Indian lands within the limits of the present state of New York. Interfering as it did with claims under the Hardenbergh patent of 1706, Bradstreet's title was as aggressively opposed as it was ardently maintained, both in the colony of New York and at the Court of Great Britain. A summary of the action taken upon the Bradstreet claim will not be amiss as an introduction to the argument by which it was supported.

So far as the native title was concerned, Bradstreet's claim originated in an Indian deed of October 29, 1768, and was completed by the acceptance of the deed and the payment of the purchase money in the following year. On presenting a petition for a patent from the Government in May, 1770, Bradstreet was at once opposed by the Hardenbergh proprietors, following which the Council of New York on May 30, 1770, directed Bradstreet to serve a copy of his petition and the order taken thereon upon the Hardenbergh proprietors with a summons to them for July 4, to show cause why his prayer should not be granted. After some delay, Dec. 10 was assigned for the argument of counsel for the Bradstreet claim and on that date the major portion of this argument, printed upon the following pages, was presented. In opposition to Bradstreet's claim which held the earlier patent invalid and its construction strained, counsel for the Hardenbergh proprietors presented their case on Feb. 5, 1771, following which the Bradstreet argument was concluded. Further evidence was given on March 11 and 18, and on the 20th of the same month a grant of 20,000 acres was made by the Council to Bradstreet.

Upon reference of both petition and grant to the British authorities for their formal approval this action was on June 5,

1771, declared illegal, the home government holding that the New York Provincial Council lacked power to decide upon the petition. The letter of Lord Hillsborough giving this decision aroused the Council and on August 14 that body made a report at length in answer to Hillsborough maintaining the powers of the province.

As a result of this additional contest the validity of the Bradstreet claim remained unsettled for two years. The discussion was transferred to England and not until August 31, 1773, was the petition granted once more by the Council of New York. The death of Bradstreet in the following year left the claim to his heirs for final settlement with the later state of New York.

The manuscript as printed on the following pages gives in full the argument of Bradstreet's counsel, those portions being noted which were added before presentation in England. So far as known, no other copy of Bradstreet's argument exists in this country, and the commissioners from New York appear to have found nothing of the character when transcribing in England the manuscripts there filed relating to the Colonial history of New York. It is here printed as a good illustration of the vagueness with which land grants were described and the character of the arguments by which they were maintained during the Colonial period of American history.

THE ARGUMENT.

May it please your Lordship & the Honorable Board:—

There is perhaps no Tribunal at which Declamation will less succeed than at this Honorable Board. When Judges are of a Rank superior to those Emotions which in vulgar Minds usurp the place of Reason the Orator cannot expect to bear his blushing Honors thick upon him. The Weight of Evidence the Energy of Argument will command Attention & the plain Road of Common Sense will lead to conviction while the flowery Path of Rhetoric remains neglected and untrodden. Had those Sentiments been adopted by the Gentlemen who spoke agt us much Time unnecessarily spent might have been Excused and were it not that the Matter in Controversy is of very great importance to the Crown & my Claim I should have saved your Lordship & this Board the Trouble of attending to this Reply. The Gentlemen who oppose us have endeavoured to support such an Extension of the Patent to Joh[1][annes Hardenbergh as is opposed to] the Right of the Crown and Deprives my Client & his Associates of the Benefit of an Indian pact Regularly obtained and of the [advantage] of his Majesty's Letters patent for the Lands in Controversy. And as at the opening of this [Controversy] it was made a Question whether Col. Bradstreet is entitled to the Grace of the Crown even were the Lands vacant. I shall in the Course of this Reply—

First shew that he is in a Situation [which] entitles him to ask that Grace and Secondly, that there is room for contending if the Patent to Hardenbergh and others be justified [it should be restricted] within proper bounds. And as to the first point my Lord[2]—

First Set of Proofs.

According to the Regulation that has for some Years existed no purchase can be made of the Indians but by the Govr. or Commander in Chief for his Majesty's use at some public meeting with the Indian Tribe to whom the

[1] The words within the brackets are supplied by the Editor when the original manuscript is torn or illegible.

[2] These two introductory paragraphs appear to have been added when the argument was taken from the New York authorities and presented to the British Court. Other changes of wording will be noticed as the argument proceeds.

Lands belong—That the Lands in Controversy were thus purchased will be rendered evident from an Indian deed procured in conformance to the above mentioned Regulation at the Expense of Col. Bradstreet and his Associates.

Indian Deed No. 1. Read it.

From this deed it appears that Col. Bradstreet and his Associates paid the Indians a large Consideration, that the Govr. obtained the Conveyance to his Majesty's Use at a General Treaty and that it was made by the Indians expressly with the Intent that Col. Bradstreet and his Associates should have the preference to all others in obtaining his Majesty's Letters patent for the Lands thereby conveyed.

But besides this Conformity to the Regulation prescribed by the royal Proclamation the purchase was made with the privity of Sir W^{m}. Johnson Superin(ten)dent for Indian Affairs in the Northern District.

No. 2 Sir Wm. Johnson's Letter. Read it.

This appears by his Letter[8] to Col. Bradstreet on the subject—

This Letter my Lord will serve not only to shew Sir William's Privity to the purchase and that it was publickly transacted as appears from these Words in it "If I was sufficiently recovered to have recourse to the several proceedings at that Time I might possibly be more circumstantial but I fancy this will prove satisfactory as to the Idea the Indians entertained and their Intentions in making the Grant to You" [but] it will also be of use under the Second General Head and shew in Addition to what has been offered in proof from the Acts & Declaration of the Esopus Indians (under whom the Proprietors of Hardenbergh's patent Claim their Indian Title) that both those Indians & the Six Nations agreed that the property of the Lands in Controversy were in the latter as the native original prop^{rs} thereof.

True it is that the Lands in Controversy are within the Line established at the above mentioned Treaty as the boundary of the Lands ceded by the Indians to the Crown; but as that Cession was posterior to our purchase and as by the Terms of the Treaty (of which we are informed the Gov^{t}. is possessed) it will appear that the Indians made a Saving in favor of those of his Majesty's Subjects to whom they had sold Land, the Cession must operate as a Confirmation of our Indian Title. And that We reason justly, my Lord, will appear from an Extract of the Treaty which I beg leave to read.

No. 3 Extract of Indian Treaty. Read it.

The Fairness of this Transaction will further appear from a Certificate of Col. Croghan who was present at the Execution of our Deed & at the

No. 3 Col. Croghan's Certificate. Read it.

[8] See summary of letter in Calendar under date Jan 22, 1771.

Indian Treaty at which it was executed. But this fact is further Confirmed by the Certificate of Robert Adems one of the Witnesses sworn to by John Butler interpreter and the other Witnesses to the Indian Deed.

No. 4 Adems Certificate. Read it.

From those several pieces of Evidence my Lord we humbly conceive that it appears to a demonstration evident that the Lands in Controversy were purchased by Sir Henry Moore at our Expense at a public Meeting or Treaty with the Native Indian propᵣˢ., and tho' to his Majesty's use, yet in fact for our Benefit, and with a declared intent to entitle us to his Majesty's Letters patent for the same, that the Consideration was actually paid & the deed executed in the presence of Sir Henry Moore, that the purchase was confirmed by the Afᵈ. Treaty of Cession and we presume there is not the least Reason to doubt we should long since have experienced the Grace of the Crown in Common with several others of his Majesty's Subjects whose purchases were in the same predicament with ours, by the Grant of his Majesty's Letters patent, had it not been for that Groundless opposition of the proprietors of Hardenbergh's patent, which has hitherto obstructed all our Attempts made at a Great Expense to avail ourselves of his Majesty's Royal favor. But, my Lord, to shew that this Opposition is groundless, We shall proceed under the Second General Head.

1ˢᵗ. To recapitulate the arguments & proofs which we offered at the first Hearing against the Claim of our Opponents, etc.

2ᵈ. To obviate such Objections as at the last hearing they attempted to avail themselves of—In the Execution of this part of our Task I shall aim at all possible Brevity; and flatter myself that every Obstacle which has hitherto prevented us from reaping the fruits of his Majesty's Royal Munificence will be effectually removed.

To do justice however to a Cause of so much importance, as we barely opened the points & read the Evidence we had to produce in support of them, without scarcely enforcing them with a single Reflection, I must beg the favor of your Lordship & the Honorable Board, that I may be a little more copious in this Reply.[4]

In the opening Argument, I broke two points. (1.) The suspicious Circumstances that attended the issuing of Hardenbergh's patent & from those concluded that the greatest favor the propᵣˢ. of that patent could expect was a rigid construction of their Boundaries—especially as it is a Crown Grant; (2.) That from a variety of Evidence it was extremely apparent that neither the Indians of whom they purchased nor the

[4] The reference is to the opening argument and petition presented in May 1770. See summary of proceedings in prefatory note.

proprietors themselves ever till of late years esteemed the boundaries of that patent to extend beyond the Popaghtonk or East Branch of the Fish Kill or Northernmost Branch of Delaware River.

Under the first point my Lord I observed that as by the Policy of Law all Letters patent in England must pass thru' certain different Offices, which serve as a Check each upon the other to prevent undue alienations of the Crown Lands so in this Country there is and at least ever since the Gov.^{t} came into the Hands of the Crown, has been a fixed and established Channel thru' which every Grant of the Crown Lands must pass in order to be good and valid in the Law.

That his Majesty & his Royal predecessors have tho't fit to make the participation of his Council as well as that of his Govr. or Commander in Chief absolutely necessary in the Grant of Crown Lands—

That therefore every grant as to situation & Quantity which has not been fully & apparently assented to by the Council for the Time being must be null & void as issued without authority.

Second Set of proofs.

I then proceeded my Lord to shew that the Grant to Hardenbergh & Company was in that predicament. To evince this I adduced the following proofs.

A. Petition of Johannes Hardenbergh for a License to purchase a Small Tract in Ulster.

(1.) Johannes Hardenbergh in behalf of himself & Company on the 18th July 1706 presented his petition to [Edward Hyde,] Lord Cornbury then Govr. of this province setting forth a discovery of a *Small* Tract of vacant & unappropriated Land in the County of *Ulster* & desiring to settle & improve it, he prays a License to purchase it of the Indians.

This my Lord was the first Step taken towards obtaining the patent in Question.

The petition is for a *Small* Tract of Land in the County of *Ulster only*—and yet scanty as the limits were which the petitioner assigned to himself, this petition was the first step towards a Grant containing, exclusive of the present & all other Controversies, upwards of 1100 M. [1100 000] Acres & extending into the County of Albany as well as that of Ulster.

No. 1 B License to purchase a small Tract in Ulster.

(2.) The Govr. probably deceived with the pretence of the Smallness of the Tract without strictly enquiring into the Bounds or extent of Country the petitioner had in view did by an Order in Council the same day give the Petitioner a License to purchase a small Tract of Land in the County of Ulster

(3.) What Use the petitioner & his Associates made of this License for the purchase of a small Tract is not uncertain— For tho' the first petition & the License grounded on it were

No. 2 Second petition of Hardenbergh.

for a small Tract of Land yet the petitioner & his Associates as appears by their Second petition dated the 17th March 1706 / 7 had so enlarged their plan that instead of purchasing of the Indians a small Tract they had procured from them a Conveyance of "All That Tract of Land lying and being in the County of Ulster stretching from the Northwest Bounds of the Township of Marbletown northwesterly ten Miles beyond the Hills that lye on the southeast Side of the Low Lands or Meadow Land that lies on the Fish Kill or River and runs northeasterly with said Breadth till You come opposite to a Creek called by the Indians Anquothkon Kill where William Leggs Saw Mill stood, and further still running Northeasterly with the Breadth of Ten Miles from said Kill northwesterly, to the County of Albany & running Southwardly along the Northwest Bounds of the Town of Marbletown and Rochester with the full Breadth first above ment^{d}. till so far as to run with a due South East Line to a certain fall in the Rundour [Rondout] Creek called by the Indians Hoanekt^{r}. which is the northerly bounds of the Land called Nepenack [Napanock] belonging to Jacob Rutsen & Jan James Bleeker [Bleecker?]". This Extravagant purchase founded on a License for buying a small Tract appears from this petition to have given great Umbrage to their Neighbours. For this second petition declares that a Caveat had been entered ag^{t}. their obtaining a patent for the above described Tract which probably interfered with their Neighbours They therefore pray a day may be assigned for hearing the parties—

What became of this Contest we are not, perhaps for want of a proper search in the Secretary's office, able to determine. We will suppose however my Lord that for the present it was dropped. But

No. 3 A. Third petition of Hardenbergh.

(4.) On the 19th June 1707 Hardenbergh & Company renewed their Application to Gov^{t}. by a third petition & prayed a Grant for the Lands they had purchased of the Indians—which was read in Council. On that very day a petition of the Inhabitants & Freeholders of the Town of Hurley praying a Grant of a parcel of Land between Marbletown & Kingston & of another parcel between Kingston & the Blue Hills was also read in Council & both petitions were ordered to lie on the Table.

No. 3 B. Order of Council on petitions of Hardenbergh & Hurley.

(5.) On the 4th of Feby 1707 Hardenbergh & Co. presented their petition to my Lord Cornbury by which they enlarged their Request even beyond the Bounds of their Indian purchase & beyond the Bounds of Ulster & extended it into the County of Albany; and by this petition they assert what is a downright Falsehood to wit that by his Excellency's favor & License

they had purchased some certain *vacant Lands* in the Counties of Ulster & *Albany* and then under a pretence that they were put off meerly from an Apprehension that the Lands they had purchased might interfere with some former Grant, they, artfully pretending to avoid all Contest, pray for a Grant exactly in the Words of their present patent which include Lands in the County of Albany.

No. 4 B. Order that the petition lie on the Table.

(6.) On the day following, 5th Feby. 1707, the last mentioned petition was read and so Cautious still were the Govr. & Council that they ordered that the petition should lie on the Table till the first Thursday in March then next and it was ordered that on that day the petitioners & the Inhabts of Hurley who had petitioned for a Tract of Land in the said County (Meaning the County of Ulster) should appear & be heard on their respective petitions on the first Tuesday in March then next.

No. 5 B.

(7.) The Inhabts. of Hurley however did not appear at the day appointed & therefore on the 4th of March 1707/8 probably the day appointed for the purpose we find an Order of the Govr. & Council that the Inhabts. of Hurley do preemptorily appear that day Month to make out the Allegations of their former petition.

No. 6 B.

(8.) On the 18th March 1707/8 but 14 days after the last Order there is an Entry in the Council Books of a petition of Cornelius Cook and Adrian Gerritse in behalf of themselves & the other Inhabitants of the County of Ulster withdrawing their Caveat & praying a Grant of the Lands mentioned in their former petition which are not included within the petition of Hardenbergh;

In consequence of which it was ordered by the Govr. & Council that a Warrant be prepared for the Atty General to prepare a Draft of Letters patent for the Lands petitioned for by Johannes Hardenbergh & Company in the County of *Ulster* and

No. 7 B.

(9.) By an Entry in the Minutes of Council it appears that a Warrant to the Atty General to prepare a patent for Johannes Hardenbergh and Company was signed—The Quit rent three pounds—

Upon those pieces of Evidence we insisted that the Crown had been deceived in the Grant in Question for that the patentees had originally petitioned for a License to purchase a small Tract of Land in the County of Ulster & had abused that License by purchasing of the Indians a Tract of ten miles in Breadth & of a much more considerable Length, that they persisted in this Abuse, by petitioning for a patent for it; That after the Obstructions to their obtaining the patent for the Lands they had actually purchased beyond all reasonable Construction

of their License were removed, they then rose in their Demands yet they did it with great Artifice in their last petition by setting forth that to avoid Contests with their Neighbours they only prayed for the Tract of vacant Land as since described in their patent & lying within the Counties of Ulster *& Albany* & therefore extending beyond either of their former petitions and their licensed Indian purchase, that nevertheless the Order of Council on their last petition expressly restricted them to the County of *Ulster* notwithstanding which, Contrary to the established Rules for the Grant of Letters patent which require the participation & Consent of the Council as well as that of the Governour the patent issued in its present form and gave the Patentees Lands in the County of Albany contrary to the express Intention of the Council.[5] That the Govr. & Council are in effect commissioners for granting the Crown Lands & must act jointly—That neither of them could execute this Trust alone, That the Govr. had not the Advice of Council to grant Lands in the County of Albany, but on the contrary acted ag^{t}. such advice in granting the patent in Question—That to suppose the declaration in the patent that it passed with the Advice of Council should be evidence of the fact, would be to contradict the last Entry in the Council Books which restricts the patent intended to be granted to the County of *Ulster*—That to give such efficacy to that declaration would be in effect to deprive the Council of their Right to participate with the Govr. in the Grant of Lands, by leaving it in his power in defiance of that Right to divest the Crown of its property even without the Knowledge of the Council & that by a single Assertion which in fact would be false—That tho' the Grant of the Crown is a Matter of Record yet any grant under the Great Seal of this province which notwithstanding any thing asserted in it, could be shewn not to have passed thro' the ordinary Channel would be as null & void as a patent under the Great Seal of Great Britain reciting all the prerequisites yet in fact & Truth supported by none of them would be. From all which it was concluded that the patent in Question issued upon false suggestion & deceit of the Crown & that therefore according to the clearest Rules of Law it is absolutely null & void & leaves full room for the Application of Col. Bradstreet's Indian purchase & petition, a Grant in Consequence of which cannot possibly interfere with any one's Right.

But to all this it was answered by the Counsel for Hardenberghs patent, that however clear it may be that the Council Board might have originally intended to confine the patent

[5] Six lines are erased in the original manuscript at this point and as the following six lines give the argument in a form preferred by the Attorney they are omitted from this text.

to the County of Ulster yet there is evidence that they afterwards consented to an Enlargement of the Bounds of the Grant—

No. 8 [B.] To support this Assertion the Warr^{t}. to the Attorney General to prepare the Draft of the Letters patent dated the 15th April 1708 was produced; the Bounds of which run exactly in the same words with those of the patent itself. And to justify this Warrant Reference

No. 7[6] was had to the Entry in the Council Books of that day by which it appears that the Warr^{t}. for the patent was signed. From whence it was concluded that the Council were privy to the Terms of the Warrant & consequently to the Boundaries contained in the patent.

When I first opened this Matter, my Lord, I was utterly ignorant that such a Warrant existed—Col. Bradstreet informed me that he could find no warrant in the Office. whence I naturally concluded that the Warr^{t}. referred to in the last mentioned Entry in the Council Books, if any ever issued, must have been grounded on the Order of the 18th March preceeding which expressly directs that the Warr^{t}. to the Atty General to prepare a patent should be confined to the Lands petitioned for in the County of Ulster.

Nor my Lord can I still help thinking that this warrant was run either upon the Governour or the Council or both without due Knowledge of its contents.[7] For neither the Warrant nor the Entry which in date corresponds with it appears to have been read in Council, nor is there the least Entry in the Council Books to show that the Govr. and Council had reconsidered the last petition of Hardenbergh the formal Order of Determination on which was that he should have a patent for the Lands petitioned for in the County of Ulster. It is easy therefore to conceive that as the Warrant was merely signed in Council its Variance from that formal Order passed unobserved; and ought to have no more Credit from the Circumstance of its being signed there & the Entry of the Secretary that it was so signed than if it had been signed in the absence of the Council. Had it corresponded with the Order it had been immaterial where or in whose presence or with whose privity it was signed. But I humbly conceive as the Council are as necessary Agents as the Govr. in the Grant of the Crown Lands, and as it appears that they had in Conjunction with the Governor by a solemn Determination restricted the petitioners to the County of Ulster, nothing less will do to remove all suspicion of Fraud than clear proof of a Revision & Renewal of that determination which our Opponents have not produced.

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[6] See No. 7 B. Ante p. 158.

[7] Six lines are erased in the original manuscript at this point the argument being developed in the following text.

There is perhaps my Lord, further reason to suspect unfair Dealing towards the Crown in this Instance. My Lord[8] Cornbury was well known both in Britain & America as a Gentleman remarkably unattentive to Business and therefore very liable to be deceived. Hardenbergh was the only man whose name appeared as a petitioner. But there were persons of more weight behind the Curtain who were to be benefited by the Grant. When the Warrant had issued Mr. [May] Bickley the Attorney General appeared as a patentee, and Mr. [Thomas] Wenham was more occultly personated by Mr. Robert Lurting who tho' inserted as a patentee lent his name to Mr. Wenham, for it appears from the Records of the Secretary's Office that the deed was executed by him to Mr. Wenham for 1/7th of the Tract, it bears the date 12th January 1708, is for a trifling Consideration and shews that the Grant was a Trust for Mr. Wenham. Nor is it I humbly conceive my Lord unworthy of Remark that Mr. Wenham was so attentive to his Object that he was not absent one Council day in which this important Business came on the Tapis, and that particularly on the day in which the Warrt. was signed in Council he was one of four of the Council present As therefore my Lord this Honorable Board when employed on the Subject of granting away the Crown Lands is always considered as a Court of Requests, as Mr. Wenham appears upon our opponents use of the signing of the Warrant of Council to have sat as one of the Judges of this Court of Requests in his own Cause, which is contrary to all Reason & Law & extreamly dangerous to his Majesty's Right (for otherwise it cannot be when one of the Guardians of his Majesty's Land stock becomes a Suitor before himself for a part of that stock) I say my Lord as all those things appear I humbly conceive that the Warrant in Question cannot cure the radical Defects of the patent. And I would further beg leave to suggest it as a Subject of Enquiry to your Lord & the Honorable Board whether five members besides the Govr. have not always been as they now are necessary to form a Quorum for Business, and if so as it appears that as well at the Meeting in which the Warrant was ordered for the Lands in the County of Ulster only as at that in which the Warrant was signed on which our Opponents so much rely one of the four Councillors present was a party the whole Basis of the patent does not fail, and if so we must submit it to your Lordship & this Board to determine what becomes of the patent itself.

Call for the Record and read it. If opposed observe it is for the Benefit of the Crown.

Here offer the proof [shown in Record Jan. 12, 1708.]

Having thus shewn my Lord that the patent is void there can be no controversy between us but if your Lordship & the

[8] Edward Hyde, Lord Cornbury, Governor of New York 1702–1708.

Honorable Board should be of a different Opinion which we flatter ourselves cannot be the Case, yet from the very suspicious circumstances which attended the issuing of Hardenbergh's patent I conclude that the greatest favor the proprietors of that patent can expect in this Controversy is a rigid Construction of its Bounds—I proceeded—

Under this Head to observe that your Lordship and the Honorable Board were Trustees of the Crown's Land Stock and the revenues either actual or contingent thence to arise and that in this View I made not the least doubt that to every Grant the Bounds of which come into Question here the Rules of Law would be applied as the proper Test; That the Law clearly is, that Grants of the Crown obtained on a suggestion of the party shall be construed strictly ag^{t}. the Grantee & most favorably for the Crown; That in this Case the Rule is the Reverse to that which prevails in the Construction of Grants between Subject & Subject—for in the Latter recitals may operate ag^{t}. but never can make for the Grantor because they are his own Words, But that in Grants of the Crown suggestions of the Grantee tho' adopted by the Crown in its Grant, can never make ag^{t}. the Crown but may & if the Matter of them is ag^{t}. the Grantee will operate ag^{t}. him; That whenever the Grant of the Crown issues on the suggestion & petition of the party, he is held to suggest at his peril because the Attention of the Crown being ingaged on the *Arduis Regni*[9] the Law has not only discharged the Crown from any Guards ag^{t}. false suggestions in fact but has made it a Rule that wherever a Grant is made on petition & suggestion of the party it shall be construed strictly in favor of the Crown; That therefore in every such Grant where the Construction is doubtful or in other Words where two constructions may be put that which is most in favor of the Crown shall be received; that tho' it is a general Rule that Grants which express themselves as issuing of the special Grace certain Knowledge and meer Motion of the Crown shall for the King's Honor be construed most liberally in favor of the Grantee, yet those words become a dead Letter when the Grant is founded on the prayer and suggestion of the party and that for this most evident Reason that those Words being expressive of the King's spontaneous & selfmoved Exuberance of favor are expressly contradicted & their Operation utterly annihilated by the Express Suit and Suggestion of the party as the moving Cause of the Grant which Observations were, it was urged, so clearly & indubitably supported by Law, that it would have been an impassable Affront to offer to your Lordship & this Hono^{ble}. Board, under whose imme–

[9] Concerns of government.

diate Care & direction the royal Land Stock is placed, a single Authority in their Support.

This patent my Lord usually called by the Name of the Great Patent pays but £3 annual Quit rent. Supposing therefore that it were not void yet the Attempts of the propr^{rs}. to extend it beyond its real Bounds is a most manifest Attack upon his Majesty's Revenue—For if it should be construed rigidly yet by its Terms it is made to contain so much more Land than was really intended to be granted them in consequence of their 2^{d}. petition that the Crown has lost an immense part of its Revenue, which had not been the Case had those Lands been patented at the rate of Quit Rents established a few Years after, which might probably have long since been the Case had those Lands been vacant. This Loss added to the Loss [to] the public arising from the hitherto unpeopled State of [so] large a Tract as the whole patent, ought as we humbly Conceive to induce the Gov^{t}. to look with a Jealousy [*sic*] eye on the late Attempt to give it an amazing Extent beyond what the Words of the patent can properly warrant.

[Proper Construction of the Hardenbergh patent.] Having thus my Lord cleared the way for a proper Construction of the Bounds of the patent we proceeded to shew how many Constructions this Grant was capable of from its own Words independent of any Evidence from without. We shewed that it was capable of four different Constructions, ground[ed] on these words of the Boundaries to wit "So running along that Line that is the Line of witness's patent Northwestly as the said Line Runs to the Fish Kill or River and so to the head thereof including the same, thence on a direct Line to the Head of a small River commonly known by the name of Cartwright's Kill" That upon these Words it appears that the Fish Kill or River is the Stream the head of which is the Boundary according to the Words of the patent. The Question is—

Here lay open the Maps. No. 1 B.

(1.) Shall that be Esteemed the Head of the Fish Kill or River where the Stream loses that Name, that is at the point of Conflux of the East or Popaghtonk Branch & West or Cookhouse or Mohawk Branch which Construction would be most in favor of the Crown or

(2.) As the Popaghtonk or East Branch divides itself into two Branches shall the Head of the Southermost of those two Branches which would furnish the next best Construction in favor of the Crown be the Boundary or

(3.) Shall the Head of the Northermost of those two Branches which would be more ag^{t}. the Crown be the Boundary,

Either of which three constructions will Leave the Lands in controversy vacant or

(4.) Shall the Head of the Mohawk or Cook-house Branch, which will furnish the Construction the most ag^{t}. the Crown of any that can possibly be & include the Lands in Controversy be the Boundary?

I insisted my Lord that as this Grant is to be construed most strictly ag^{t}. the grantees & most in favor of the Crown, the first of the above four Constructions ought to take place because it would take least from the Crown. To shew that this Construction was not only possible but natural I observed that in the Grant the Fish Kill which is the Stream Below the forks of Shewakin or the place of Union of the Mohawk & Popaghtonk Branches, is the River the head of which is in the Grant declared to be the Boundary by the Words "*and so to the head thereof.*" That therefore the Question arises to wit which is the Head of the Fish Kill or River, the answer to which I conceived was that the forks of Shewakin or the place of Union of the Mohawk & Popaghtonk was the head of the Fish Kill or River. My Reasons my Lord were these

(1.) That there the Fish Kill or river Ends because it there loses its Name.

(2.) That if the Sources of Branches or smaller streams may be called Heads of the River because they empty themselves into it, the Fish Kill has a variety of other Heads as the Source of the Lochawapin & many others on the West Side, & those of the Massacomeck [?] & many others on the East Side; That both the East & West Branches have their respective peculiar & appropriate names and that in Geographical Descriptions a River is never made to extend farther than it carries its name; That there is as manifest a Distinction between a River and its Branches as there is between a Tree & its Branches, and that as the head of the Tree is properly the head of the Trunk or place where the Branches insert themselves so is the Head of the River the place where the Branches insert themselves and that the Mohawk & Popaghtonk are confessedly and evidently Branches only and the Fish Kill or River with respect to them is the main Body or Trunk.

(3.) That this Construction will not only give least Land to the Grantees but will also be attended with less doubt; for that if by the words *Head of the River* should be understood its source or that fountain by which its Stream is fed through a Branch flowing into it there are a variety of such heads. In this sense the source, spring or fountain of all the smaller streams having their proper Names & feeding the main Stream are equally heads of Fish Kill or River; That more especially as the Fish Kill or River divides itself into two Branches at the forks of Shewakin to wit the Mohawk or Cook-house & the

Popaghtonk, the Sources of the two Streams are equally the Heads of the River; that the Popaghtonk is known to Divide itself into three Branches two main Streams & a smaller one [and] therefore in the Sense of our Opponents has three heads which according to their Reasoning are all heads of the Fish Kill or River; that the Cookhouse or Mohawk Branch may have as many or more the Country having not been sufficiently explored to determine that fact; That should the Case be otherwise our Opponents have furnished us with at least three heads of the River, which makes it necessary to confine the Boundary to the Forks of Shewakin to remove Doubts & prevent the Grant from being void. For as on the one hand if the doubt can be removed it must be construed as I have shewn most in favor of the Crown, so on the other if the doubt remains unsoluble the Grant must be null & void.

But if the Construction which would confine them to the forks at Shewakin be rejected I insisted that nothing could justify their extending up to the Head of the Mohawk Branch— It is more than probable that in that early day when the patent was granted it was uncertain where the Head of the Fish Kill was in their Sense of the Word. The Grant therefore must have intended according to their Construction to give the Head of the Fish Kill wherever it might be as the Boundary. But in their sense of the Word the Fish Kill has several Heads and which to Chuse is the difficulty. That which gives most land I have clearly shown ought not to be adopted because it would be contrary to the clearest & most uncontrovertible Rules of Law, but on the contrary that and only that which gives Least to the Grantees must be received or all the Laws relating to Crown Grants must be rejected, and therefore if they should be permitted to extend Beyond the forks of Shewakin they must still be confined to that head of the Fish Kill which will give them the least Land, which as I observed before must be the Head of the South Branch of the Popaghtonk. But my Lord if the Several Branches had then been explored to their respective Sources the Question still remains, which was the Head in the Sense of the Crown. The Answer I humbly conceive is, that head which will injure the Crown least and this too seems to be the most natural Construction from a View of the Maps because that head is the nearest to the Head of Cartwrights Kill & is so situated that a line extending from the one to the other nearly coincides with the Main Course of the Popaghtonk.

But I further observed that should your Lordship and the Honorable Board be inclined to relax the Rules of Law in meer indulgence to our Opponents it would not rid them of their difficulties. That this indulgence could not be

extended so far as to assign to them the Head of the Mohawk Branch as their Boundary, meerly because that will give them more Lands; That such an Indulgence could not with any Colour of Reason be expected from the Guardians of the Rights of the Crown; That the East Branch followed to its Source formed the Head of the River as much as the West Branch; That it would be absurd to distinguish that which was the most remote as the Head of the Fish Kill because that in their own Sense of the Word every Source of a river is its head be it more or less remote; That the words of the Grant are not to the most remote head but to the Head thereof, & That the East Branch if it be measured in its meanders is at least as long as the West Branch, And finally that should the River be deemed to head either at the forks at Shehawkin [*sic*] or at the Head of the South Branch of Popaghtonk, or even at the Head of its North Branch the Lands in Controversy will still remain vacant.

I would beg Leave my Lord to add one thought more that has lately occurred to me. Where a Tract of Land is described as adjoining to a River as the Hardenbergh Tract evidently is, I believe even in a Grant from subject to subject it would be thought a very strange & unnatural Construction to extend it across one of its main Branches & yet such is the Construction set up against us in the present Case. Should Wm. Penn or any of his descendants have put such a Construction on his Grant as to have extended it across the Mohawk & up to the Popaghtonk Branch, it would be thought by all the World to be an absurd Extension, and yet that Grant ought to be construed with the utmost Liberty as it issued not only as it is expressed of the Crowns special Grace, certain Knowledge & meer motion but expressly out of Regard to Memory & Merits of his late Father in divers Services & more particularly in Consideration of his Courage, Conduct & discretion under the Duke of York in that signal Battle & Victory fought & obtained ag^t^. the Dutch fleet commanded by the Heer Van Opdam in the Year 1665[10]

[Grant to William Penn cited.]

In short my Lord if We consider the Words of the Grant without any Aid from without, which I humbly contend must ever be the rule when they are capable of their own Exposition as the Words of the Grant in Question undoubtedly are; if we Consider what Construction of them Reason would naturally dictate & if finally we apply the Rules of Law to them which demand such a Construction as is most for the Interest of the Crown, and cannot as I humbly conceive be dispensed with, all these conspire to prevent the Hardenbergh Tract from including the Lands between the

[Interests of Crown to be guarded.]

[10] Battle of Lowestoft June 3, 1665.

Popaghtonk & Mohawk branches & consequently leave Room for extending the Bounty of the Crown to Col. Bradstreet.

We might indeed my Lord have relied on the Objections arising from the Manner in which the Grant in Question was obtained & upon the Words of the Grant itself construed in a rational Sense & in Conformity to the known Rules of Law as amply sufficient to insure us a Victory. But in a Case of so much moment it [we?] thought it prudent to supererogate by adding some Collateral proof to fortify our Reasoning on the Subject.

The Gentlemen in Support of The Patent observed that there were no recitals in it but of the petition on which it was grounded —That an Indian purchase is not necessary to make a Title at Law & that it is in no Case admissible as Evidence but to clear up doubts about Boundaries—I agree with the Gentlemen that by the Laws of England the Crown is the fountain of all Titles as well to Estates as to Honors & Offices; but I believe no Man of understanding ever meant to assert that this prerogative of the Crown was ever carried in the Ideas of Government to such a Length as to divest the aborigines of their natural Rights. The Government cannot be ignorant that King Charles the Second issued his royal proclamation whereby he asserted those Rights and forbade the Grant or Occupation of any Lands without an Indian purchase. Nay the very Idea aimed to be established by the Gent^{n}. who oppose us is that the Six Nations & the Mohicanders or River Indians have rendered themselves subjects to the Crown of Great Britain, which implies their protection in their person & Estate.—And upon a principle of protection has the Gov^{t}. always acted towards them by making an Indian purchase necessary previous to the Grant of a patent. However true therefore it is that in a Court of Law an Indian purchase is not a necessary Link of Title it is as true that before this Honorable Board it ought to be considered as the first Link and if the Bounds of a patent come into Question here, as our Opponents admit that in a Court of Law an Indian deed will serve to Explain Boundaries surely this Honorable Board will conceive that the apparent disparity between the Bounds of the Indian purchase made by License of Gov^{t}. & the patent grounded on it furnishes the strongest Reason for construing the patent rigidly.

[Indian rights in the premises.]

But my Lord it is not only clear that the Indian purchase on which the proprietors of Hardenberghs patent founded their patent does not include any Lands in the County of Albany nor across the East Branch of the Fish Kill, [but] We shewed from the most irrefragable Testimony that the proprietors of that patent never till of late Years conceived that it included any Lands between the East & West Branches.

For this purpose we produced sundry pieces of Evidence.[11] The first was a Treaty held with the Esopus Indians in whom the property of the Lands now in Controversy are pretended to have been vested. The preliminary measure to this Treaty was as we shewed an Order of certain Justices at Kingston suggesting that Major Hardenbergh had complained that the Indians hindered the Running of the Outlines of the patent & appointing a day for the Treaty. At which day which was the 27th. Augt. 1743 the Treaty was accordingly held & among other Indians Sander their Chief Sachem & Hendrick Hegan were present. This Hendrick several of our Opponents say lived on the West side of the Popaghtonk Branch where he had an orchard. The very Cause of the Treaty appears to have been Hardenberghs Intention to run the out Lines of his patent; The Business was so opened to the Indians by Hardenbergh himself. He shews his Intention to have been to make a Survey of more Lands than he had ever purchased of the Indians, for he expressly informed them that he desired to run the out Lines of his patent to find out the true Owners of the Land and that after it was measured he would not take any Land without first agreeing with & paying the particular owner of each Tract.

Is it possible My Lord for a Man to have been more explicit than Hardenbergh was, or can any Thing be clearer than his design to run out the Boundaries of his patent in the full Extent of his Claim? And what such extent was is as evident from the answer given to him by the Indians. It was that he should have Liberty to Survey round the patent and up the River Papakonk [Popaghtonk?] and also to divide the Land, but not to Claim any Right to the Soil before a purchase of them; Had he then Intended to make the west Branch his Boundary he would have desired Leave to run up that Branch, he would have so expressed himself, And to this there could have been no Objection but the true one, a Want of property in the Esopus Indians, because he expressly disavowed a Claim of property to any of the Lands before a purchase & the Indians as expressly stipulated agt. such Claim until a purchase— Thus then my Lord it appears that Hardenbergh in a solemn Transaction extant of Record asserted the Popaghtonk or East Branch as his Boundary.

[Survey of Henry Worster 1743.] This Treaty[12] was in Consequence of a Survey that had been attempted by Henry Worster a few days before [the treaty of Aug. 27, 1743] who from the

[11] Fifteen lines of the original text have been erased at this point. The same argument being developed in the following lines the erasures are omitted.

[12] Four lines of original text erased have been omitted at this point the argument being developed in the following lines.

Testimony of Peter P. Low was the person employed for the purpose, and in this Attempt the Indians took away his Chain when he had got up the River as far as within ab^{t}. 5 Miles of Papakonk [Popaghtonk] Village. Which chain the Witness declared he purchased from the Indians by Worster's directions. From the Testimony of this Witness therefore it appears clearly that in the first Attempt to make a Survey of the patent Worster ran up the East or Popaghtonk Branch. In Consequence of the Ill success of this Attempt the treaty was held at Kingston expressly grounded on a Complaint of Hardenbergh that the Indians had hindered the Surveyor appointed by the Prop^{rs}. of the patent from running the Outlines of the Tract. Thence it is evident that Hardenbergh esteemed the East Branch to be the outline of the patent, & in effect so asserted in his Complaint on which the Treaty was grounded, and it was accordingly expressly stipulated by that Treaty that the outlines should be run & that the Indians should permit him to run up the Popaghtonk or East Branch. The work was accordingly performed a few days after by Worster; for [as] the same Witness Peter P. Low deposed—Worster informed him that the Indians had been invited to the Treaty at Esopus, That in a few days after Worster returned from Esopus & informed him that they had agreed with the Indians & that there would be no Danger in proceeding with the Survey, hired the Deponent as an Interpreter at 6 / per day & proceeded with him to the Papaconk [Popaghtonk] Village, That Worster left him there & went down the River ab^{t} 5 Miles to the place where the Indians had stopped him & surveyed the out Line to Papaconck from thence to papataghan [Pakatakan?] & from thence to the head of the River & having there marked 2 or 3 Trees they crossed over to the Head of Catrix Kill where Major Hardenbergh was waiting for them. What clearer proof there can be that the East Branch was then agreed to be the out Line of the patent is difficult my Lord to conceive.

[Other surveys in 1745.] It appears from the Evidence that in the Year 1745 another Survey was made by Ebenezer Worster at which Time they stole the Opportunity of running across from the East to the West Branch but conscious that it was inconsistent with the Right of the patentees & the Sense of all the parties to the Indian Treaty they never attempted to survey down the West Branch & accordingly have not laid down that Branch in the Map which they gave in Evidence. After this Survey in which the Course of the Popaghtonk was run as the out Line of the patent, another Survey was made in 1745 by Order of the prop^{rs}. at which Thos. Nottingham was present. In this Survey which was performed by Ebenezer Worster they exactly followed the

Line of the first Survey along the Popaghtonk Branch and up to its Northermost head passing by the River called the Tweed which ought to have been their True Bounds agreable to the Words of the Indian Treaty, that being naturally the Stream intended, not only on account of its Course directly towards but also its Approximation to the Head of Catrix Kill. On this Survey as Thomas Nottingham deposed they found several Monuments of Stones & marked Trees that had been before made by Henry Worster at the Time of his Survey in 1743 and particularly at the Head of the North Branch of Popaghtonk and that Ebenezer Worster on this Survey did something towards a division of the patent into Lots & for that purpose made stone monuments & marked Trees as he went along. That during this Survey they never attempted to cross the East Branch but at such places where its East Bank was so mountainous & steep as to be impassable & whenever this was not the Case they always kept their Survey on the East Side of the Branch. This scrupulous punctuality was indeed attempted to be accounted for by their fear of the Indians & not as proceeding from a Consciousness that their patent did not extend to the West Branch. But how far this pretence is well founded will appear from the above noticed Complaint of Hardenbergh & the Indian Treaty in Consequence of it on both which occasions he so effectually declared the Popaghtonk to be the out line of his patent. It is indeed rendered still more groundless by the Boundaries of their Indian deed dated the 6th June 1746 near 3 Years after that Treaty. The Words of those Boundaries are as follows: Beginning at Papaconk at the River & running down the said River as far as to the Bounds of the [13]Cashiktonk [Cashietonk?] Indians including half the River & half the Islands as far as aforesaid, then along the Bounds of the Lands of Cashiktonk Indians to the Bounds of Rochester patent, then beginning again at Papakonk af^{d}. & running up said River including half the River & half the Islands as af^{d}. to Pakatakan & so up to the head thereof, from thence with a streight Line to the Head of Catrix Kill &ca the Mohawks Claim excepted. This deed evidently pursues the Words of the Indian Treaty with the utmost precision, and was doubtless procured in Consequence of the Stipulation contained in that Treaty that notwithstanding the permission thereby given to Hardenbergh & his fellow proprietors to survey up the Popaghtonk Branch as the Outline of their patent they should not presume to claim any Lands comprehended within it which they had not bought of the Indians.

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[13] This Indian name occurs in various spellings the one within the brackets being perhaps the most approved. See: post p. 171.

It is further observable my Lord that in this Deed the Mohawks Claim is excepted. What this Claim could possibly be but the Right of the Mohawks extending to the East Bank of the East Branch we cannot conceive because it was never pretended that a Line from the Head of that Branch to the Head of Catrix Kill would include any Land belonging to the Mohawks on any other Supposition, unless it be that which we urged in the Opening Argument that all the Lands possessed by the River Indians belonged to the Mohawks by right of Conquest.

But it is further Remarkable that this East Branch is declared in the Indian deed to be the *River* contrary to the present attempt of our Opponents to make the West Branch pass for the River,—and this remark is strengthened by another Indian deed procured by the patentees only two Months after the one just noticed. It is dated the 2d August 1746, is for a tract lower Down the River or to the Southward of the other Tract. It was obtained of the Kashightonk [Cashietonk?] & Minisink Indians, begins at the Great Yagh House and with a Course W. & by North strikes the Fish Kill or Main Branch of Delaware River & after crossing it four Miles runs parallel with it as far as the Cashightonk or Minisink Indians Right or Claim extended & then runs easterly to the late purchase of the Esopus Indians bearing Date the 6th June 1746 on the said River. But that purchase is evidently bounded on Popaghtonk. Therefore those two Deeds compared together demonstrate that the Popaghtonk was in the Estimation of Major Hardenbergh who was one of the patentees & Mr Livingston who was a purchaser under a patentee and 57 Minisink Cashightonk & Esopus Indians the *Fish Kill or main Branch of Delaware River* and consequently serve in conjunction with Hardenbergh's Complaint, and the Indian Treaty entered into with Hardenbergh in consequence of that Complaint, to demonstrate that the Intention of the Crown & the patentees in the Words by which the Tract is described to run up the Fish Kill or River to the Head thereof was that the Tract was to run to the Head of the Popaghtonk Branch.

Indeed so clear & conclusive is this Evidence arising from the Complaint of Hardenbergh, the Treaty to which that Complaint gave Birth & the two Indian deeds all clearly expressive that the Popaghtonk was the out Line of the patent that no doubt can possibly remain on the Subject.

We shall therefore my Lord for Brevity Sake waive observing either on the other Evidence offered by us to prove that the Lands between the two Branches belonged to the Mohawks or on the two Certificates of Doctor Shucksburgh [Richard Shuckburgh] relative to Govr. [William] Cosby's Mine to prove

the Lands between the two Branches were vacant, or on the several patents which have been granted by the Crown all which are incompatible with the Supposition that the West Branch is the Boundary of the patent now under Consideration & proceed to a short Survey of what has been offered by our Opponents in proof of that point.

[Claims advanced by opponents. Rutsen Purchase of 1706.]

The first fact they Relied on was that one [Jacob] Rutsen on the 31st July 1706 made a purchase of the Indians of sundry small pieces of Land between the East & West Branches & besides those of a particular Spot on the West Side of the West Branch called Akanunkapunk. Great pains were taken to ascertain the Location of this same Akanunkapunk by the Testimony of Mr. [William] Cockburn & others. But my Lord it was obvious at the Time that Evidence and the Affidavit of Rutsen's Son [John?] to support it were produced that this purchase was made without a License for the purpose, & tho' from the Sons Affidavit it appears the father had declared that he was to have been a patentee & was unjustly deprived of his Right, yet certain it is that nothing can be concluded from any Evidence that has been offered that this purchase was made with an Intent to ground the patent on it. Those who know the Disposition of Indians know also that they may for the most trifling Recompense be prevailed on to sell Lands that do not belong to them, tho' they are extreamly apt to hold their indubitable property at a high price. The Supposition is further exploded by every Step taken towards obtaining the patent in all which this unlicensed purchase is utterly disregarded. And as a proof how much our Opponents are put to their Shifts I shall only remark that Col. Hardenbergh the Gentn. who produces this Evidence has thought it necessary to prove that his father one of the patentees & thereby Agent in procuring the patent that was known to the Govt. was accessory to a manifest Wrong done to Rutsen.

[Indian Deed 1751.]

Another Indian deed dated the 3 June 1751 was produced agt. us; but for what valuable purpose I cannot conceive. It was however evidently obtained to facilitate their present Claim & to Extend their Tract to the West Branch & is in Substance a Grant of the Lands between the two Branches. It would appear very extraordinary my Lord if this deed should have any weight in the Controversy, obtained as it was near half a Century after the patent issued and evidently after the proprietors had formed the Scheme of extending their patent beyond its original Bounds contrary to the most solemn, express & repeated Acts to which they were parties. To what an enormous Extent patents will

grow if the proprs. are permitted to explain their Bounds by Indian deeds taken near fifty years after their dates, Your Lordship & this Honorable Board will readily conceive. In proportion as Lands rise in Value such Deeds which can always be procured at the Expense of a few Gallons of Spirits will multiply & descendants from the first patentees will by such means be able to reap at the Expense & to the prejudice of the Crown what their forefathers never sowed.

But there is indeed a most cogent Reason why if that Indian deed is to receive any Notice it ought to operate so strongly agt. our Opponents as to give us the full enjoyment of all We expect. Your Lordship & every Member of this Honorable Board must perfectly remember that the Instrument ushered in as the Indian Deed contained Many sheets of paper, that I requested the Whole should be read, that my request was answered by a Declaration from the Mouth of one of the Counsel for our Opponents that I should have the Sight of the Instrument & make what Use of it I thought proper. I accordingly applied for it, my Application was indeed backed with the respectable Weight of Government, But what did all this avail? Neither the Justice of the Request nor the possitive promise of our Opponents nor even the Authority of Govt. has been sufficient to command its production. On the contrary a single sheet of paper has been lodged in the Hands of Mr. Deputy Secretary instead of that voluminous Instrumt. & of which I have not asked a Sight, because it was not the paper given in Evidence. But why permit me to ask it my Lord, why this strange & unprecedented Concealmt? Is it not a maxim that the whole Contents of every written Evidence shall be read if required? Why do our Courts of Justice daily determine that where a Deed is proved by a party to be in the Hands of his Opponent the strongest Argument is furnished agt. him by its non production? Is not the Reason evidently this my Lord that he would produce it did not the whole Instrumt. taken together strongly operate agt. him. Concealed Weapons not only beget Jealousy but are productive of Danger, and he who wears them is strongly to be suspected of a Design to make a most improper use of them. I flatter myself therefore as I appeal to the Honor & Dignity of Govt. that this concealed Instrument will not only be taken from our Opponents; I trust that its point will by the Hand of the Govt. be turned agt. them and that were there no other Reason for it, your Lordship & this Honble Board to do us full Justice & discountenance so dangerous a proceeding will favor us with a Grant of the prayer of our petition, which I would only hint my Lord may be done consistent with the strictest Justice as a Grant to Us cannot divest our Opponents of a single Iota of their Right.

But to pass my Lord from a piece of Evidence so disagreably circumstanced with one single reflexion more—I would beg Leave to observe that this piece of Evidence obtained without a License to purchase & to give Colour to the Enlargment of the Bounds of their patent is it seems Urged as an Argument of preference in their favor to our Indian Deed obtained at the Treaty with the Six Nations at which Sir Henry Moore, Sir Wm. Johnson & several other Gentn. of the first Rank were present & obtained too by the immediate Agency of Sir Henry Moore with the Knowledge of Sir Wm. & in exact conformity with the royal proclamation. But how unequal the Competition between this Deed thus regularly obtained & the other procured from vagrant Indians to serve the purposes of Countenancing an undue extension of the bounds of a patent issued near 50 years before, I need not mention.

The next piece of Evidence offered by our Opponents will not I flatter myself weigh a single Grain in the Scale of Evidence. It is composed of Sir Henry Moore's appointmt. of Mr. [Simeon?] Metcalf to run the Line of Cession agreed to by the Six Nations at the above mentioned Treaty and his Oath that he ran the Line agreable to that appointment. And the only fact colligible from this Evidence is that Sir Henry Moore in the Construction of that Cession considered the West Branch as Delaware River—Agreed my Lord.

[Line of Indian Cession as run by Mr. Metcalf.]

But it is obvious that the late Govr. who besides his good Sense had a just Knowledge of the Geography of the province knew that the Fish Kill or Main Branch of Delaware divides itself into two principal Branches the Popaghtonk & the Mohawk Branch. That this River being by the Indian Cession made part of the Boundary of the Lands ceded to the Crown it was fit & right for him to direct that Branch which would give the Cession the most Beneficial Operation for the Crown to be observed as the Boundary and accordingly he directed the Surveyor (without any distinction between the Delaware & its Branches) to begin his Survey where a due East Line from Owego strikes Delaware & to extend it up the River till opposite to where Tienonderah falls into the Susquehannah thereby fixing the West branch for the purpose of that Survey to be Delaware river as intended by the Cession. But surely my Lord When Delaware River & its branches are thus complexly considered, from the preference given by Sir Henry Moore to the West Branch it can never be esteemed that the Govt. near sixty years before & upon another subject, & agt. the most solemn Acts & express Declarations of Our Opponents intended to fix the West Branch as the Bounds of their patent. When a Tree and its Branches are complexly mentioned every

Branch is the Tree but when a Distinction between the Tree & its Branches is taken up the Construction is vastly different. In our Case the Fish Kill was evidently considered as the Main Branch of Delaware River & the Popaghtonk Branch was as evidently a Continuation of that Main Branch in the Sense of our Opponents—

If my Lord we weigh the Testimony of Jacobus Bruyn in the Scale of Evidence it will like Beltshasar tried in a more awful Balance be found wanting. In short it is much of the kind with that administered by Sir Henry Moore's Commission to Mr. Metcalf for it proves no more for our Opponents than that Mr. Bruyn was surveying Lands many years ago, on the West Side of the West Branch & that in pursuing his Survey Downward he struck upon a Branch (doubtless the West Branch) which he concluded to be Delaware River because (& for a very good Reason too) the Fish of passage came a great Way up that stream. But this certainly proves no more than that the West Branch was one of the Waters of Delaware as it unquestionably is, and so as undoubtedly is the East Branch and therefore from this Reason only without mentioning more, may as properly as the other be called the Delaware River. When such a monstrous Fabric is built upon so slender a Basis it may well be said—*Debile fundamentum fallit opus.*

[Deeds of Partition among Claimants under Hardenbergh Patent.]

But my Lord we have other Evidence administered by our Opponents still more curious than this—Nothing less in Truth than their own deeds of partition by which it appears that they had divided the Lands between the Two Branches among them—I have often heard that a Mans own Words and Actions were the highest possible evidence agt. him; but it is to me a doctrine entirely new & adjusted to the Latitude of this patent only that a division of Lands between a Number of persons should be evidence of their Right to them, Nay what is more Absurd that such Division should so operate even agt. their own most solemn Acts. I hope this Doctrine will not become fashionable. Should it grow into general Taste there would be an End to all further Grants of the Crown Lands for what Company of Land Jobbers would submit to the Expense of patent fees and the never ending Quit Rent of $^{2}/_{6}$ Sterling per hundred Acres, to procure a Title to the Lands of the Crown adjoining to their property when a common Scrivner at the Trifling Expense of five pounds could by the Manoeuvres of the pen vest them in full propriety with all the neighboring Territory. Besides what horrible Confusion of private property would ensue upon this principle; partition agt. partition would confound all the Bounds of Right and be the Source of endless Litigation profitable to be sure to the Men of our profession

but never to be wished for by those of us who are Friends to justice, order, decency & regularity in civil Life. I cannot therefore my Lord but admire at the Attempt of our Opponents to avail themselves of a piece of Evidence so dangerous in precedent, in itself as light as Air & relied upon agt. their own solemn Acts as a proof of the Extent of their patent to the West Branch of the Fish Kill.

But my Lord my surprise is increased when I find this piece of Evidence attended with an Act of their Surveyor & Servant. It is his Map of the patent which on its face carries the strongest Evidences agt. them. How strangely inconsistent is our Conduct when the Love of property is our principle of Action. Sanguine in our pursuits, everything carries with it demonstration in our favor. Utterly blind to the apparent Inconsistencies of Evidence we fancy a beautiful Harmony, a rational Consistency & Co-operation reigns through all the parts of our proof. These unnaturally blended together by the Heat of passion form to our View an engaging picture while to others less prejudiced the piece appears grotesque indeed and truly verifies the observations of the elegant Roman poet—*Spectatum admissi risum tenеatis Amici.*

[Map of 1749.] This Map exhibits to your Lordship the following Matters of fact. On the face of it we see no delineation of the West Branch of the Fish Kill & the Lines of division of the Lands lying to the Eastward of the East Branch tho' continued across it towards the West Branch remain unfinished and are not butted by any Object. This *res infecta* which however proves no more than a design of the parties to appropriate to themselves were it possible the Lands between the two Branches appears to be a compleat Actual Survey & Allotment of the Lands on the East Side of the *East* Branch. This Map is dated Novr. 8th. 1749 41 Years after the date of the patent & before the Settlemt. & improvemt. of any part of it. It speaks of itself as made at the Request of Mr. Robert Livingston & Gulian Verplan [c] k & Company and as being a survey and division of the Tract of Land called Hardenbergh's or the Great patent. It imports that the actual Survey was began on the 7th April 1749 & finished the 8th of Novr. following which is the day of its date. The Surveyor annexed to it a field Book containing a description of the Lands & form of the Mountains & of the Monuments & remarkable places near which they are placed but all this appears to relate only to the Lands on the East Side of the East Branch. What evidence then can this Map furnish for our Opponents but that it is an actual survey of those Lands & [an] unfinished attempt to appropriate by a random allotment the Lands between the two branches, Nay there is not

the least syllable inscribed on it to shew that it was intended as an actual Allotment of the Lands between the two Branches. On the contrary the whole description in the field Book relates entirely to the Lands on the East Side of the East Branch, For when the Surveyor after having described his several Courses & Monuments from the Bounds of Minisink patent on the Fish Kill or Main branch of Delaware River many miles below the forks of [14]Shehawkin proceeds to ascertain the 4th Monument he describes it thus "At the End of those Courses we placed the 4th Monument on a piece of low land full of Timber, a heap of Stones with a flat Stone standing on the Top marked No. 4 by a Butternut Tree marked with a Cross & No. 4 & four Notches." This Monument stands abt. 2 Chains from the River & 18 Chains to the Southward of the [Popaghtonk] or Branch or Crook of the River. Here it seems the Surveyor did not even dream of the West Branch as having any relation to his Survey but calls the Popaghtonk or East Branch simply *the* Branch or Crook of the River. He then proceeds and describes the 5th Monument to be at little distance up the papghtakan [sic] Branch, the sixth further up the said Branch the seventh at Popatonck Indian Village on the East Side which together with their Indian Treaty in 1743 & their two Indian Deeds in 1746 shews that Popakonk was not on the West Side of the Popaghtonk Branch as they have attempted to make appear in Evidence. The surveyor then proceeds to describe his Courses and Monuments up to the Head of the North Branch of the Popaghkonk & when he comes to the 12th Monument at Paghatakan Village he takes Notice of a large River coming from the East which is the River Tweed the Head of which is doubtless the true Boundary intended by the patent should it be tho't proper to admit of an Extension beyond the forks at Shehawkin.

The 17th & last Monument on the East Side of the Popaghtonk he described thus "At the End of all those Courses We came to the head of Paghatakan Branch where we made the 17th Monument *At the old Corner bounds made by Henry Worster.*" Which old Corner Bounds Ebenezer Worster says is a Spruce-pine Tree that had been made by Henry Worster marked with No. 3 & a cross & several other Spruce Trees marked standing by, Where says Ebenezer Worster We made a large Monument of Stone & marked a Flat one on the Top with No. 17 and a cross & 17 Notches. This Monument stands by a Swampside towards the upper End of the Swamp. The Swamp is about 4 Chains wide & near two miles long & is between two high mountains. Against the upper end of the mountains the monumt. stands. Thus it appears that Ebenezer

[14] Earlier in the Manuscript this river is called the Shewakin. Ante p. 164.

Worster the very person employed in the final Survey & in the Allotment of the Tract in order to a partition well knew and performed his Work under a Sense that the Popaghtonk Branch was the true Boundary of the patent, for what my Lord could he in any other View possibly mean by calling the placing where he fixed his 17th Monument the *old Corner Bounds of Henry Worster,* which evidently was the Corner Bounds made by him when Peter P. Low in the year 1743 attended him in his Survey up to the Popaghtonk to its head where Ebenezer Worster's 17th Monument is fixed and from thence across to the Head of Cartrix Kill. It is notorious that Henry Worster never attempted in his survey to make an Allotment in order to a decision of the Tract. He did no more than run two of the Outlines of the patent in Exact conformity with the Indian Treaty. In doing this he made his old Corner Bounds at the North head of the Popaghtonk which was Numbered 3 the first probably being at the Bounds of Minisink patent and the second at the Forks of Shewakin. And thus does this very Map of Ebenezer Worster which was made the foundation for a random division of the Lands between the two Branches appear clearly to correspond with the most natural Construction of the Words of the patent and the Sense of the original patentees discovered in Hardenbergh's Complaint to the Justice of Kingston ag^{t}. the Indians for obstructing them in their Survey of the outlines of their patent in his Request of a permission from the Indians to run those outlines, their stipulation at the Treaty to permit him to run up the Popaghtonk as one of those uplines, the running of it by Worster in Consequence of that Treaty, & in the two Indian deeds to Hardenbergh & Company obtained after that Treaty. In Short my Lord, Ebenezer Worster's Map mentions not a syllable either of the West Branch or the Lands between the two Branches, & contains no Delineation of those Lands or of the West Branch. It appears to be properly & only a Survey of the Lands lying on the East side of the Popaghtonk. Of which [survey] the present proprietors have availed themselves by an Extension of the Lines of Allotment of those Lands so as to make a random Division of the Lands between the two Branches, on a supposed right which they never avowed but by their deed of partition executed between them above 40 years after the date of the patent & contrary to the their own prior & solemn declared sense in their Complaints, Treaties, Indian deeds & Surveys.

Had the Evidence been closed here on the former Hearing the Ballance would have stood Thus; On our Side the natural Construct[ion] of the patent itself, supported by solemn Action of the parties, a public Treaty with the Indians in the presence of a general meeting of the Magistrates, two Indian purchases

clearly explanatory of Our Opponents Sense of the Bounds & repeated Surveys, all corresponding with those other pieces of Evidence; On their side only one insidious attempt by Ebenezer Worster in his last survey to make a survey down the West Branch, & a random partition of the Lands between the two Branches made without actual Survey & at the distance of upwards of 40 years after their patent issued. Which way upon this state of Evidence, the Ballance would preponderate they clearly saw. To cast therefore a little more Weight on their side of the scale they were prepared in the sundry Affidavits wearing the most suspicious Marks of Fraud which need not now be enumerated as their untoward appearance occasioned their total rejection, and this rejection the Opportunity of examining Witnesses *ore tenus* at this day on a single point of fact. But my Lord before I proceed to weigh this part of the Evidence I beg leave to observe (1) that if the persons[15] whose names were subscribed to those Affidavits really did swear to them, their Testimony even had it now come up to what they before swore would be much lessened in point of Credit because a regard to their Reputation would in some Measure oblige them to observe a consistency.

2dly That their Testimony depending on their Memories ought not to have equal Credit with the clear written Testimony on our part, especially as

3dly Their Testimony to have full Weight ought to go back to the Date of the patent which is upwards of 60 years old & this is absolutely impossible &

4thly because what they swear to can only be Matter of Information of a much later date furnished to them by Indians, whose Integrity is too weak to resist a Bribe, and we have proof that the Proprs. of the patent in Question have had it in Contemplation for many years past agt. their own most public, solemn & repeated [acts], to claim the Lands between the two forks which could only be performed by giving the name of the Fish Kill or Main Branch of Delaware River to the Mohawk Branch.

Under the influence of those observations I proceed as summarily as is possible to remark on the oral Testimony of this day[16].

[Summary of argument for Col. Bradstreet.]

The Sum of this important controversy my Lord we take to be this. On our part we have been at the Expense of an Indian purchase regularly made of one of the Six Nations, whose property

[15] The names of Peter Kuydendal and Jacob Westfall are given in the margin at this point and appear to be the names of the witnesses testifying.

[16] A page of the manuscript is left vacant at this point to call the attention of the attorney to the oral testimony which may be submitted. He then summarizes his argument for Bradstreet.

we say the Lands in Controversy originally were. Our opponents claim a Right to them solely by patent & Indian purchases made near forty years after their patent, While it has been the invariable practice of the Govt. to make an Indian purchase precede a patent. We found the propriety of our Indian purchase upon a clear admission by deed of the Indians of whom they purchased, that the lands between the two Branches Belonged to the Mohawks, (2) On the known History of the Country, & on public Treaties all which shew clearly that the victorious Confederate Nations with the Mohawks at their Head have gained all the original property of the River Indians by Right of Conquest & that it was customary for the Conquerors to permit the Conquered to remain their Tenants at will but especially denied them the priviledge of Sale. On their part they have only shewn that the Indians or some of them of whom they purchased had merely a Residence on the Lands in Controversy and this Residence is not only consistent with the Supposition of the Right of Property in other Conquerors but can furnish no Argument that is not utterly annihilated by the express allowance in their deed of the Right of the Mohawks notwithstanding their Sale. And even were the two Indian Rights doubtful we have the Countenance of Govt. in a purchase regularly made by us at a great Expense to entitle to a preference.

Again tho' our Opponents ground their Claim of present Title solely on their patent we have shewn that this patent in the manner in which it was obtained was so irregular & unauthorized if not fraudulent as to be null & void, or at least to be justly subject from its Suspicious Circumstances to the most rigid Construction. That were it otherwise circumstanced our Construction of the Words of the patent would be confirmed by the Clearest Rules of Law which manifestly require that every patent granted upon the suggestion & petition of the party shall be construed most favorably for the Crown, that the Fish Kill is the Main Branch of the River below the forks of Shewakin, that at this place it divides itself into two Branches the West Commonly called the Mohawk or Cookhouse Sepoos, and Machach Sepoos, the East the Papataghan or Popaghtonk Sepoos. That therefore the Head of the Fishkill is properly at the forks of Shewakin which Construction is most favorable to the Crown. That should a less favorable Construction be adopted, the Fishkill will then appear to have several heads, that the East Branch consists of a union of three large Streams the North Branch, the River Tweed & the Beaver Kill, that tho its most distant Source is not quite so northerly as that of the West Branch yet not only from our Testimony but also from that of Mr Cockburn whom our Opponents sent up to

make the Experiment the East Branch is larger swifter & discharges more water into the Main Body. That the Words of the patent "to the Head thereof" does not say which Head & it has several, if the forks at Shehawkin is not the proper Head. That therefore the most favorable construction for the Crown if we are to quit those forks will be furnished by the Head of the Tweed, that even should not the Crown be so favored yet the most northerly source of the East Branch, which Leaves all the Lands in Controversy vacant ought undoubtedly to be the Boundary. That this last Construction falls in with the clearest Weight of Evidence from without, & besides other proof, with their Indian Treaty their two Indian Deeds, their repeated Surveys and particularly their Map of the last Survey, & with their full & declared Sense & Construction for at least forty years after the date of their patent.

To stem all this Torrent of Evidence they have opposed nothing more than one attempt by Ebenezer Worster in his last survey to make a stolen survey of the West Branch contrary to the parts of the Treaty entered into with the Indians in presence of a large Assembly of Magistrates; their random partition after all those Transactions, which in itself is not Evidence, & finally the parol, [i. e., verbal] Testimony of some Witnesses speaking from their Memory about facts gained only on Hearsay & of much later date than the patent and probably gained entirely either directly or indirectly from Indians whose words are of little Weight & who may have been, as they all on any occasion may be, bribed to propagate forged names of places to Suit the Designs of a party; and finally as this lose [loose] heresay & uncertain Evidence stands opposed to the natural face of the Country, the Testimony of other Witnesses, the Words of the patent in the legal Construction, and a train of solemn public & notorious facts furnished by our Opponents & most of them standing on Record as a lasting Memorial of their Truth we flatter ourselves that the Ballance of evidence is clearly in our favor & if so, as the most liberal Construction that can be given to the patent in Question will confine our Opponents to the northern most head of the Popaghtonk Branch in which Case the Lands in Controversy must be vacant, We humbly pray that we may be favored with his Majesty's Letters patent for them upon the usual Terms & Conditions.

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